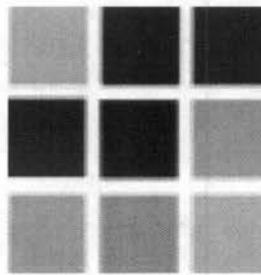


CONFIDENTIAL AND TRADE SECRET



**Timetrics  
End User License Agreement  
“EULA”**

The A Star Group Inc d/b/a Timetrics  
v. 03.05.2013c

END-USER LICENSE AGREEMENT  
TIMETRICS SOFTWARE

THIS SOFTWARE END-USER LICENSE AGREEMENT ("EULA") IS A LEGAL CONTRACT BETWEEN LICENSEE (AS DEFINED BELOW) AND THE A STAR GROUP INC D/B/A TIMETRICS ("TIMETRICS"), A NEW YORK STATE CORPORATION, LOCATED AT 154 READE STREET, 2<sup>ND</sup> FLOOR, NEW YORK, NY. 10013.

LICENSEE ACKNOWLEDGES AND AGREES TO BE BOUND BY THE EULA AND THE TERMS AND CONDITIONS CONTAINED HEREIN INCLUDING BUT NOT LIMITED TO ALL PAYMENT TERMS, RIGHTS, RESPONSIBILITIES, PROTECTIONS, WARRANTIES, OBLIGATIONS, RULES, RESTRICTIONS OF USE AND LIMITATIONS. LICENSEE FURTHER AGREES THAT ANY OPERATORS, REPRESENTATIVES, EMPLOYEES, OR ANY PERSON OR ENTITY ACTING ON LICENSEE'S BEHALF, SHALL BE BOUND BY, AND SHALL ABIDE BY, THIS AGREEMENT.

## 1. TERMS AND DEFINITIONS.

1.1. "Licensee" shall mean collectively Northland Energy Trading LLC and Hedge Solutions, Inc. both New Hampshire Corporations, with offices at 500 N. Commercial Street, Suite 302A, Manchester, NH, 03101 and its Operators, officers, directors, employees and owners, all jointly and severally defined as Licensee. The term Licensee shall not include any other third parties, contractors, agents, vendors, suppliers or affiliates.

1.2. "Operator" shall mean an individual who is an employee of Licensee who is acting within the scope of a formal employment relationship and who agrees to be bound by the terms and conditions of this EULA, who is opening, accessing, installing, using and/or operating the Timetrics Property for the Purpose hereunder. Any Operators shall be named and listed in Appendix C, if applicable.

1.3 "Timetrics Software" shall mean all computer software, (including web enabled versions), firmware, hardware, technology, systems, programs, source code, object code, visual basic code, sql code, C++ code, parallelization, data reception, information feeds, models, analytical tools, processes, trading models, trading strategies, arbitrage models, alerts, triggers, directives, visual displays, forecasts, signals, messages, databases, methods, applications, API's, software, methodologies, metrics, measures, media, files, information, worksheets, instructions, manuals, demonstration materials, reports and documentation, lists of modules, technical manuals, training materials, specifications, marketed, developed or in-development by Timetrics including but not limited to the software's functional attributes, Updates, Derivative Works, procedures, routines, related developments, design, input screens, output screens, algorithms, reports, graphs, decision support methods, capabilities, visual expressions, ideas, pricing modules, features, parameterization, design, user-interfaces, database structure and format, data formats, computer code, data manipulation and analysis, reporting outputs, dashboards, pricing, approaches, methodologies, formulae, mathematics, techniques, text, graphics, analytical processes and

methods, intellectual property, trademarks, trade secrets, knowledge, know-how, application, technology, graphical user interfaces (GUI's), schematics, techniques, development tools design, reports formats, procedures for the valuation of financial and physical instruments, deals and products, not limited to energy deals, methodology and techniques for the computation of risks, including but not limited to business risks, market, volumetric, credit risks, liquidity risks, strategic risks, supply chain risks, option portfolio risks, procurement risks, commodity chain risks and operational risks and other risk management strategies, output of software, descriptions, lists of components and modules, and any other associated material, information or documentation, in whatever form, (including backup copies of any of the foregoing) all of which may include the proprietary and trade secret application and use of public domain information, collectively called ("Timetrics Software").

1.4 "Timetrics Property" shall mean the (i) Timetrics Software (as defined above) including without limitation all intellectual property, Trademarks, analytical tools, know-how, methods, knowledge, applications, or software, API's, hardware, technology, models, trading tools, trading strategies, processes, reports, design, databases, mathematics, formulae, systems, methodologies, project management tools, documentation (including without limitation reports, work product, and works of authorship) and information provided by or used by Timetrics (ii) Timetrics Confidential Information and Timetrics Recommendations (as defined in Section 2 of the Engagement Letter) (iii) all other software, hardware, technology, documentation, and information provided or used by Timetrics; and (iv) all worldwide patents, copyrights, trademarks, trade names, service marks, trade secrets, rights of publicity, rights of privacy, moral rights, software ownership rights and all other intellectual property rights [in an to the foregoing] as may exist now and/or hereafter come into existence and all renewals and extensions thereof in perpetuity.

1.5 "Trademarks" shall mean (a) the trademarks, trade names, and service marks used by Timetrics, whether registered or unregistered; (b) the respective stylistic marks and distinctive logotypes for such trademarks, trade names, and service marks; and (c) such other marks and logotypes as Timetrics may designate from time to time in writing.

1.6 "Updates" means any and all forms of changes or additions made to the Timetrics Software, including without limitation, object code, source code, algorithms, and output, of any modifications, customizations, updates, error corrections, patches, changes, revisions, additional features, new reports, design changes, bug fixes, new releases, or other updates of or to the Timetrics Property. The provision of Updates during the Term if any, are at the sole and absolute discretion of Timetrics.

1.7 "Derivative Works" shall mean modifications, adaptations, alterations, copies, improvements, enhancements, Updates, extensions, upgrades, revisions and other works created from or using the Timetrics Property (or any portion thereof), including without limitation: (i) for copyrightable or copyrighted material, any translation, copy, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (ii) any duplications, excerpts, critiques, sub-reports, and copies (in whole or in part) made by Licensee or third party which may be incorporated into internal correspondence, documents, property, software, spreadsheets, models, systems, reports, or discussions; (iii) for patentable or patented material, any improvement thereon; and (iv) for material which is protected by trade secret, any copies (in whole or in part) or new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.

1.8 "Effective Start Date" means the date November 1<sup>st</sup> 2012 which shall be the date Licensee accepts this End User License Agreement (including by electronic means), and the date of first

Initialed (Licensee)

Initialed (Timetrics)



use and license of the Timetrics Property hereunder, unless the Effective Start Date is otherwise modified in Section 40 hereunder.

**1.9 "Term"** shall have the meaning set forth in Section 3.1.

**1.10 Licensed Modules** means the bundled suite of Timetrics Software in the list of software modules itemized in the Section 15 of the Engagement Letter. The collective name of the bundled modules as shall collectively be applied to this EULA shall be called STORM, which is the acronym for Superior Timetrics Options Risk Management ("STORM"). The aim of the STORM is to directly improve trading or transactional revenue of the Licensee as defined in the Engagement Letter and is used to assist in decision support and revenue creation, trading, arbitrage, hedging and financial opportunity of Northland Energy Trading. STORM shall be for Front Office use only and is not licensed hereunder as a Middle Office system.

**1.11 Licensee's Systems** shall mean all models, spreadsheets, computer systems, decision support tools, software, hardware, analytical tools, applications, databases, and other technology used or provided by Licensee, whether existing now, or may be developed in the future.

#### **1.12 Merger of Contract Documents**

a. This EULA is an integral part of the Engagement Letter with effective date November 1<sup>st</sup> 2011 and signed and executed by both parties on February 23<sup>rd</sup> 2012 that identifies the engagement to which this EULA relates ("Engagement Letter"). The Engagement Letter that accompanies this EULA shall be merged and incorporated herein and applied in full force and effect, and shall be considered part of the Contract Documents. Any capitalized words in this EULA, that were previously defined in the Engagement Letter, shall have the meanings given to them in the Engagement Letter.

b. The parties agree that the Terms and Conditions with effective date November 1<sup>st</sup> 2011 and signed and executed by both parties on February 23<sup>rd</sup> 2012 ("Terms and Conditions") and the three extension letters to the Engagement Letter with effective dates July 1<sup>st</sup> 2012 ("Extension Letter 1"), January 15<sup>th</sup> 2013 ("Extension Letter 2") and February 15<sup>th</sup> 2013 ("Extension Letter 3"), collectively ("Extension Letters") shall be merged and incorporated herein and applied in full force and effect and shall be considered part of the Contract Documents.

c. In addition, the parties have executed confidentiality agreements Northland Energy Trading Nondisclosure Agreement ("Licensee's Non-Disclosure Agreement") signed and executed by Timetrics and Licensee dated October 2 2011 and the provisions set forth in the Timetrics Non Disclosure Agreement ("Timetrics Non Disclosure") signed and executed by Licensee and Timetrics dated March 22 2011 are incorporated by reference and merged herein and applied in full force and effect and be considered part of the Contract Documents.

d. Any capitalized words in this EULA, that were previously defined in any of the foregoing Contract Documents, shall have the meanings given to them in the foregoing Contract Document, except where specifically superceded and replaced otherwise hereunder. For clarification, the definitions of Timetrics Software, Timetrics Property, Trademarks, Updates, Derivative Works shall be superceded and replaced in the Contract Documents by the definitions in this EULA in Sections 1.3 to 1.7 respectively which shall take precedence.

#### **2. LICENSE AND GRANT OF RIGHTS.**

**2.1 Limited Grant of Rights:** Timetrics grants to Licensee, subject to the payment conditions of Section 10, and pursuant to the terms and conditions (and all restrictions set forth within) of this EULA the following; (i) a limited non-exclusive, non-transferable, revocable, license right to use the Licensed Modules (in end-user form) granted to Licensee under a SaaS Options Type-A license (via the

access considerations listed below), during the Demonstration Term and Implementation Term of this EULA, (ii) a limited non-exclusive, non-transferable, revocable, license right to use the Licensed Modules (in end-user form) granted to Licensee under a SaaS Options Type-B license (via the access considerations listed below), during the Launch Term of this EULA and; (iii) a limited non-transferable, revocable license to utilize, in perpetuity, the numerical results from the Timetrics Property related and pertaining to Licensee's business. The foregoing licenses shall be solely for Licensee's ordinary internal business use and for the Purpose set forth hereunder.

All Timetrics Property, reports and work product (including but not limited to written advice or oral presentations) by Timetrics are solely for Licensee's internal use and, subject to the express confidentiality provisions and other terms and conditions hereunder and may not be edited, distributed, published, made available or relied upon by any other person, company or entity without Timetrics express written permission. If such permission is given, Licensee shall not publish any extract or excerpt of Timetrics written advice or report or refer to Timetrics without providing the entire advice or report at the same time. Licensee acknowledges and agrees that the owner and copyright of all reports and papers including authorship is Timetrics.

**2.2 Purpose of License:** The purpose of the license hereunder ("Purpose") shall be with two goals (i) to provide a demonstration of the Timetrics Software to the Operator and to review its implication of increased profits to the Trading Book and (ii) to make a decision on the Implementation and Customization and the continued use in a Launch phase for either a short Beta pilot of up to 10,000,000 gallons or a full scale launch on the entire Trading Book.

The Purpose shall be subject to the express terms and conditions of this EULA and Contract Documents. Any ongoing use of the Timetrics Property beyond the Term of this EULA and/or Engagement shall be subject to the licensee fees contained in this EULA.

#### **2.3 Type of License:**

(i) For the Demonstration Term and Implementation Term the parties agree to an off-site, non web-enabled, Software as a Service (SaaS) license of License Type A – Option A as described in the Engagement Letter.  
(ii) For the Launch Term the parties agree to a off-site hosted, VPN-enabled Software as a Service (SaaS) license of License Type B – Option B as described in the Engagement Letter

**2.4 Location of Hardware and Software:** The Timetrics Software shall reside at Timetrics' offices in New York City and/or designated data centers where applicable. Under a License Type A, Timetrics Software shall be hosted, operated and accessible only by Timetrics and its Resources. Under a License Type B, Timetrics Software shall be hosted, operated and accessible by Timetrics, its Resources and the Operators listed in Appendix C.

The license shall at all times be non-downloadable and shall not reside on any of Licensee's Systems or local machines. At Timetrics sole discretion, during the course of the Implementation Term, Timetrics may allow Licensee to view Timetrics Software via Webex or other VPN dial-up to facilitate the acceptance tests. In this case, Licensee agrees that it may not download, use or otherwise attempt to transfer or access any part of the Timetrics Property to its local machines or otherwise.

**2.5 Portfolio Covered:** The portfolio covered shall be the Trading Book, which is the Heating Oil Options and Customer Book of Licensee as defined in Section 2 the Engagement Letter. The Trading Book shall exclude all rolling swaps and associated futures. Without limitation of the Contract Documents, Licensee may not use the Timetrics Property for any other products,



portfolios, transactions, storage assets, Front or Middle Office applications, subsidiaries, commodities, natural gas, power or trading portfolios or any other Derivative Strategies (as described in Section 9 of the Engagement Letter).

**2.6 Users:** (i) During the Demonstration Term and Implementation Term Timetrics Software shall be provided under a SaaS Option Type-A and operated only by the Timetrics and its designated Resources (ii) During the Launch Term Timetrics Software will be operated as a SaaS Option Type-B and operated by only the approved Operators (as defined in Section 1.2 hereunder) as well as Timetrics and its Resources.

**2.7 Access Type:** Timetrics shall include in the License Fees and I&C Fees, ordinary business internet connection at broadband commercial speed type, up to transfer speeds of 12 to 13 Mbps. Should Licensee require additional higher speed access in upgrading to 20mbps or other T1 Internet Access (for instance in high-frequency trading, extensive ISO transfers or real-time data reporting), the parties will agree in advance on connectivity speed and the additional charges associated with the foregoing shall be itemized in Appendix B and reimbursable in the I&C Fees. For the Demonstration Term and Launch Term it is anticipated that no additional access fees will be required, unless specified by Licensee.

**2.8 Real-Time and Other Broker Pricing Fees:** Licensee shall be responsible for the purchase and subscription of any real-time or other broker pricing feeds from the CME, Nymex, weather data or any other broker or other service provider. This EULA and the pricing hereunder, expressly does not contemplate real-time direct feeds of direct integration of live market information form Licensee's brokers or other market vendor. Should Licensee require such additional direct real-time pricing, the costs of such integration and third party fees will be included as an additional charge in the I&C Fees as determined Appendix B. For the Demonstration Term no additional broker data or data feeds and associated fees will be required.

**2.9 Automated Trade Execution and API to Brokers:** Licensee shall be responsible for the execution and any automated trade execution feeds to its brokers. This EULA does not contemplate any automated trade execution from the Timetrics Software.

**2.10 Modifications to Timetrics Property:** The terms of means license means that Licensee agrees that Timetrics shall have the sole and exclusive right to use, alter, maintain, enhance or otherwise modify the Timetrics Property and shall be solely responsible for such subject to the terms herein. Licensee shall not make (or attempt) to make changes to the Timetrics Property or add cells, formulae or reports. If Licensee requests a change to the Timetrics Software, the request shall be made in writing under a change request form, and shall be considered an Update and such costs shall be included in the Implementation Fees and scheduled in Timetrics release schedule. All changes shall be and become the property of Timetrics.

**2.11 Entirety of License:** Except as otherwise expressly authorized in the Contract Documents or by Timetrics in writing, the non-exclusive user rights set forth in this EULA are the entirety of Licensee's rights in connection with the use of the Timetrics Property. Accordingly, all rights in and to the Timetrics Property are hereby expressly reserved. Timetrics shall be entitled to use, sell, assign, transfer, and/or otherwise provide rights relating to the Timetrics Property (whether in whole or in part) to any third party for any purpose free from any claim of Licensee. Nothing contained herein shall be construed as granting or implying any transfer of rights to Licensee in the Timetrics Property. Licensee will not act or fail to act in any manner inconsistent with such title and ownership. Nothing in this EULA shall be construed as precluding or limiting in any way the right of Timetrics to provide services or goods

(including software) of any kind or nature whatsoever to any person or entity as Timetrics in its sole discretion deems appropriate.

### 3. TERM OF LICENSE

**3.1 Effective Date and Term:** This EULA and the license granted hereunder shall be effective as of the Effective Date set forth at the beginning of this EULA and shall remain in effect for the Demonstration Term and subject to both parties signature and execution in Appendix A shall continue to the options of the Initiation Term and Launch Term collectively ("Term") unless otherwise terminated as provided for in this EULA.

The Term shall be governed in three phases

- (i) Demonstration Term which shall cover the period from Effective Start Date until the presentation to Licensee on or before March 6<sup>th</sup> 2013.
- (ii) A mutual option of an Initiation Term which shall cover the period from March 6<sup>th</sup> 2013 to May 31<sup>st</sup> 2013 for ongoing implementation and customization of the Timetrics Software for a go-live environment
- (ii) A mutual option of a Launch Term which will begin after the May 31<sup>st</sup> 2013 and shall be continued until March 31<sup>st</sup> 2014.

The parties agree that both parties signature on the Appendix A shall acknowledge the parties mutual agreement to extend throughout the Initiation Term and Launch Term.

**3.2 Renewals and Extensions:** This EULA shall not automatically renew or extend past the Term set forth hereunder. Should Licensee wish to extend its use or license of the Timetrics Property, any such extension shall be done on a quarterly billing cycle and the parties will execute an extension to the Term in writing. Absent this extension, it is expressly understood that no use or continued license of the Timetrics Property shall be authorized after the end of the Term.

**3.3 Email Addendums:** The parties agree that email confirmations of any extensions to the EULA and/or Engagement Letter shall be legal and binding, and shall be followed up with letter signatory within ten (10) business days. All terms and conditions of this EULA and all Contract Documents shall be merged and applied in full force and effect into any emailed or signed and written extensions to this EULA.

### 4. RESPONSIBILITIES OF LICENSEE:

**4.1 Management Responsibilities:** It is understood and agreed that the license and use of Timetrics Property and/or performance of Timetrics services hereunder may include results, reports, work product, advice and recommendations; but all decisions in connection with the implementation of such results, reports, work product, advice and recommendations shall be the responsibility of, and made by Licensee. Timetrics will not perform management functions or make management decisions for Licensee, unless agreed to in writing and contemplated in the Engagement Letter.

Without limiting Licensee's responsibilities hereunder, Licensee agrees that Licensee, and not Timetrics, shall perform the following functions: (i) make all management decisions and perform all management functions; (ii) accept responsibility for the use of Timetrics Property results, work product or services and the decisions made and actions taken by Licensee thereupon; (iii) approve and be responsible for any final documents and/or representations made to its regulators, supervising and governmental authorities; and (iv) be responsible to establish and maintain internal controls over the processes with which such services and license of Timetrics Property are concerned, including, without limitation establish and maintain ongoing risk policies and procedures, risk measures, risk limits and controls,



Middle Office setup and controls, internal limits, controls on trading and hedging activities.

**4.2 Data Accuracy:** Licensee acknowledges and agrees that Timetrics may need to base its conclusions and results from Timetrics Software on the data, materials and other information including but not limited to facts and assumptions, that Licensee furnishes and that Timetrics may choose to rely on the use such data, material, and other information furnished by or at the request or direction of Licensee. Licensee represents that any information provided to Timetrics shall, to the best of Licensee's knowledge, be complete and accurate, and recognizes that without any independent investigation or verification, Timetrics may have to rely upon the accuracy and completeness of such Licensee data, material and other information. Inaccuracy or incompleteness of such data, material and other information furnished to Timetrics could have a material effect on Timetrics' ability to perform its services, the results and conclusions from the Timetrics Software, results of any services and performance under this EULA. Therefore Licensee accepts all responsibility for the accuracy, and completeness of such data, material and other information provided, and shall indemnify and hold Timetrics and its Indemnified Parties harmless from any incompleteness, inaccuracies and omissions arising thereof. Licensee undertakes that, if anything occurs after information is provided by Licensee to Timetrics, to render such information untrue, unfair, incomplete or misleading, Licensee shall promptly notify Timetrics.

**4.3 Cooperation with Timetrics:** Licensee will cooperate with Timetrics in its performance of services and providing of license under this EULA. Licensee shall be responsible for the performance of Licensee's employees, contractors, subcontractors, and affiliates and their cooperation with Timetrics hereunder and compliance with this EULA. Such cooperation by Licensee, shall specifically include (i) providing prompt access to information and explanations of the foregoing as requested by Timetrics; and (ii) providing or arranging Timetrics with timely access to and use of the personnel, facilities, equipment, data and information to the extent necessary for Timetrics to complete the Purpose under the EULA and perform the services under the Engagement. The Engagement Letter may set forth additional responsibilities of Licensee in connection with the EULA. Licensee acknowledges that Licensee's failure to perform these obligations could adversely impact Timetrics' ability to perform Timetrics' services. Timetrics shall not be responsible for any delays caused by Licensee's delays in providing relevant data or access to personnel. In this case, Timetrics shall be able to push-back or delay dates on any deliverables, use of software or final reports, without financial penalty to Timetrics. Overage times for delays caused by Licensee shall be billed at a time and materials basis, to be defined at a weekly amount as determined under the contract price. If delays caused by Licensee are such that Timetrics cannot finish the project within the specified time, Timetrics shall not be obligated to continue its services beyond the expiration date of the EULA.

**4.4 Reporting:** During the performance of Timetrics services or license under the EULA, Timetrics may supply email, oral, draft or interim advice, preliminary analysis, reports or presentations but in such circumstances Timetrics' final deliverable, if any, as specified in the Engagement Letter, or final written report shall take precedence. No reliance should be placed by Licensee on any email, oral, draft or interim advice, preliminary analysis, interim reports or presentations. Where Licensee wishes to rely on email, oral, draft or interim advice, preliminary analysis, interim reports or presentation, Licensee shall inform Timetrics and Timetrics will provide documentary confirmation of the permitted use or non-permitted use of the advice concerned.

## 5. OWNERSHIP

**5.1 Ownership.** Timetrics and/or its licensors, vendors, affiliates, or suppliers shall own and retain all the sole and exclusive right,

(including copyright), title and interest in and to all Timetrics Property, throughout the world and in perpetuity. Licensee agrees that this EULA does not grant or imply a transfer of rights, ownership, title or interest in any manner whatsoever, to the Timetrics Property to the Licensee. All inventions (including discoveries, ideas, or improvements, whether patentable or not), which are conceived or made during or after the Term of this EULA and are derived or result from or in any way utilize any Timetrics Property, shall belong to Timetrics. Timetrics shall retain the right to use or market any of its Timetrics Property for any purpose, without obligation of any kind to Licensee.

**5.2 Ownership of Derivatives:** The foregoing ownership rights of Timetrics in Paragraph 5.1 or otherwise stated in this EULA shall extend without exception to all Derivative Works and to all Upgrades, enhancements, adaptations, upgrades, improvements, modifications, revisions, copies, and changes made to the Timetrics Property, including without limitation (i) any copies (in whole or in part) made by Licensee, Timetrics or any third party and; (ii) any duplications or excerpts made by Licensee or a third party into the Licensee's Systems (and/or third party's system), reports, models, spreadsheets or databases, whether made during the course of or after the Term of the EULA, and copies thereof, whether in whole and in part.

**5.3 Confidential and Proprietary.** Licensee acknowledges and agrees that Timetrics Property constitutes trade secrets and/or copyrighted material and shall be considered without exception Confidential and/or Proprietary Information of Timetrics and/or its licensors. Licensee acknowledges and agrees that all Confidential and/or Proprietary Information that is derived or result from or in any way utilizes the Timetrics Property, whether or not acquired or created by Licensee or any third party, during or after the Term of this EULA, shall be and/or become the exclusive property of Timetrics, and hereby irrevocably assigns to Timetrics in perpetuity all rights of all kind and character in or arising out of the foregoing, to the extent where Timetrics does not already own such rights.

**5.4. Licensee Data:** Licensee shall own its proprietary data, positions, and input data, which shall be entered and converted into the Timetrics Software and/or Timetrics Property ("Input Data"). Licensee represents that it will maintain at all times its own independent copy of the Input Data and will provide only duplicate copies of Input Data to Timetrics during and after the Term. Under the terms of this EULA, Timetrics shall be the custodian of such Input Data, and the foregoing data shall be subject to the confidentiality provisions of the Licensee's Non-Disclosure Agreement. Timetrics shall have the rights to utilize the Input Data in the Timetrics Property for the Purpose set forth hereunder. Where Licensee does not own the rights to such data, such as in the purchase of broker prices or market data, Licensee shall be responsible to procure the necessary licenses for Timetrics to incorporate such data into the Timetrics Software, where such market data is not free or publicly available.

## 6. RESTRICTIONS OF USE

**6.1 General Restrictions:** Licensee agrees that, its license, use and access to the Timetrics Property shall be expressly subject to the following restrictions and Licensee agrees that it shall not directly or indirectly (and will not permit any third party to): (i) post, distribute, resell, license, publish, broadcast, display, time-share, rent, lease, sublicense, lend, commercially exploit, or otherwise transfer the Timetrics Property or information related to the Timetrics Property (including but not limited to posting in any public forum such print, the internet, any form of newsletter, radio or television or via a third person), or any copy thereof, in whole or in part to any third party; (ii) integrate or incorporate Timetrics Property into any third party's system or Licensee's Systems or; use Timetrics Property as a basis of design to make recommendations to any third party's system to modify or enhance

Initialed (Licensee)

Initialed (Timetrics)



a third party's products; (iii) shall not copy or disclose or reveal the intellectual property including but not limited to the features, functionality, methodologies, design and architecture of the Timetrics Property, to any third party and/or competitor of Timetrics (such as for integration into any third party's system or as the basis of any recommendation to any third party to modify or enhance its products or services); (iv) take any action that would cause the Timetrics Property, to be placed in the public domain; or take any action that would otherwise encumber the Timetrics Property; (v) access, use, broadcast, commercially exploit, sell or distribute the Timetrics Property (or any portion thereof) or any rights under this EULA, for any Licensee's services or third party services beyond the scope specified in this EULA, including without limitation providing such access or use on a service bureau basis, facilities management, third party testing facility, outsourcing or any other operation of similar purposes as the above; (vi) it may not, translate, rent, lease, sell, sublicense, loan, resell for profit, distribute, time-share or create any the Timetrics Property or any portion thereof or permit any other party to do so of use by Licensee; (vii) shall not interfere in Timetrics provision of services hereunder; (viii) shall not publish or disclose any trading results or trading improvements from the Timetrics Property hereunder, including without limitation any adverse publicity or adverse results from the Purpose hereunder.

**6.2 Internal Restrictions:** Licensee agrees that, its license, use and access to the Timetrics Property shall be expressly subject to the following restrictions and Licensee agrees that it shall not directly or indirectly (and will not permit any third party to): (i) use Timetrics Property with any other equipment, firmware or hardware other than that provided by Timetrics under the License Type selected; or use the Timetrics Property in any computer environment not specified in this EULA or outside of the access and License Type specified hereunder; (ii) use Timetrics Property as a basis of design to internally develop (or have a third party develop), duplicate, improve or create similar models, systems, spreadsheets or databases (including developing, modifying, improving or enhancing Licensee's Systems); (iii) copy, modify, adapt, improve, enhance, translate, mimic, create Derivative Works, create or develop duplicate models or applications based on the Timetrics Property (or any portion thereof), or create, enhance, make improvements to or otherwise modify any part of the models, systems, spreadsheets, databases, or Licensee's Systems to be similar to the expression (in whole or in part) of the Timetrics Property; (iv) make error corrections to or otherwise modify, adapt the screens, reports, calculations or any other part of the Timetrics Property (in whole or in part) and/or create alternative or abridged versions of the Timetrics Software that would be considered Derivative Works of the Timetrics Property; and (v) refer to, obtain guidance from or otherwise use any of the Timetrics Property as part of an effort to develop a model, spreadsheet, or program having any functional attributes, visual expressions, analytic components or other features similar to those of the Timetrics Property.

**6.3 No Reverse Engineering:** Licensee agrees that, its license, use and access to the Timetrics Property shall be expressly subject to the following restrictions and Licensee agrees that it shall not directly or indirectly (and will not permit any third party to): (i) modify, reverse engineer, re-create, back-into, disassemble, decrypt or decompile the Timetrics Property, including without limitation from the results, output and reports or any portion thereof and shall not otherwise attempt to discover the source code, formulae, algorithms, trading "processes", methodologies, or techniques or reduce to human perceivable or re-usable form, or otherwise reduce to human-readable form, the underlying ideas, mathematics, formulae, expressions, database structure, and codes, user interface techniques or algorithms of the Timetrics Software by any means whatsoever, directly or indirectly, or disclose any of the foregoing; (ii) create or re-create, any part of the mechanics of the source program for the Timetrics Property

(including in spreadsheet or access format) from the information made available hereunder to Licensee, by reverse compiling or duplicating the reporting and analysis formats, disassembling or otherwise, attempting to work backwards to arrive at a similar solution; (iii) attempt to validate the results of the Timetrics Property by re-creating the calculations, formulae, trading techniques, algorithms, expressly without Timetrics consent or independently from using the Timetrics Property (iv) utilize the Timetrics Property for other applications within the company or copy or mimic the software (in functionality, design, reporting and layout, database architecture or spreadsheet templates) for any other uses or applications within the company.

Licensee acknowledges and agrees that the rights of usage granted under this EULA are strictly conditional on the restrictions set forth in Section 6, and otherwise such rights herein would not have been granted.

## 7. CONFIDENTIALITY.

In connection with this EULA, Licensee recognizes there is a need for Timetrics to disclose Timetrics Confidential Information (as hereinafter defined) to the Licensee. As an express condition to such disclosure, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, as an express condition to such disclosure, Licensee agrees as follows

**7.1. Obligations:** Licensee shall protect and prevent Timetrics Confidential Information from any misappropriation, unauthorized used, unauthorized disclosure, unauthorized access, harm, theft, manipulation, tampering, unauthorized publication, unauthorized copying, unauthorized electronic transmission or other communication, and sabotage of any kind whatsoever and Licensee agrees that it shall not, either directly or indirectly, verbally or otherwise, disclose or make available in any form, to any third party any Timetrics Confidential Information without the advance written consent of Timetrics. Licensee agrees that it shall not use the Timetrics Confidential Information for its own benefit or for any purpose other than what is provided for in this EULA, which shall be used solely for the furtherance of the Purpose set forth hereunder. This confidentiality obligation shall continue during the term of this EULA and in perpetuity (or until such date as Timetrics releases Licensee of said obligations in writing). Licensee shall assume liability for any use or disclosure of Confidential Information by its employees, servants, or any other party that obtains access to such Confidential Information by or through Licensee.

**7.2 Non-Disclosure and Limited Use:** Licensee shall hold all Timetrics Confidential Information in strict confidence and shall not disclose any Timetrics Confidential Information to any third party. Licensee shall disclose Timetrics Confidential Information only to employees who need to know such information for the Purpose set forth above and who have signed agreements that obligate them to refrain from disclosing that Timetrics Confidential Information as required under this EULA. Licensee shall take all reasonable measures (and no less than the same as used to protect its own confidential and proprietary information, and in not event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication, or dissemination of Timetrics Confidential Information. No copies of Timetrics Confidential Information may be made unless approved in writing by Timetrics. Licensee shall disclose Timetrics Confidential Information to third parties only with Timetrics advance written consent and to those who or have signed Nondisclosure Agreements directly with Timetrics that obligate them to refrain from disclosing that Timetrics Confidential Information as provided for herein.

**7.3 No License:** Licensee understands and agrees that all Timetrics Confidential Information provided by or on behalf of a Timetrics remains the sole property of Timetrics and is highly



confidential. Other than the limited and restricted license contained herein, nothing else shall be construed as granting or implying any ongoing transfer of rights, title or interest of any nature whatsoever by license or otherwise to Licensee in or to the Timetrics Confidential Information. All rights, title and interest in and to the Timetrics Confidential Information are reserved by, and remain the sole property of the Timetrics and/or its licensors, suppliers and contractors.

Licensee acknowledges and agrees that all Timetrics Confidential Information whether or not acquired or created by Licensee during the Purpose, shall be the exclusive property of Timetrics, and hereby irrevocably assigns to Timetrics in perpetuity all rights of all kind and character in or arising out of any Timetrics Confidential Information created or acquired during the Purpose by Licensee, to the extent where Timetrics does not already own such rights. All inventions (including discoveries, ideas, or improvements, whether patentable or not), which are conceived or made during or after the term of this EULA and are derived or result from or in any way utilize any Timetrics Property or Timetrics Confidential Information, shall belong to Timetrics. Timetrics shall retain the right to use or market any of its property including its intellectual property and Timetrics Property without obligation of any kind to Licensee. Any tangible or intangible embodiments of Timetrics Property and/or Timetrics Confidential Information that may be generated or created by Licensee, either pursuant to or in violation of this EULA, will be deemed to be the sole property of Timetrics and fully subject to the obligation of confidence set forth in this EULA

**7.4 Description of Confidential Information:** "Timetrics Confidential Information" means all information and any idea in whatever form, including without limitation tangible or intangible, oral, visually, written, electronic, graphic, machine recognizable, and/or sample form, whether disclosed to or learned by Licensee pertaining in any manner to the business of Timetrics or to Timetrics' clients, affiliates, licensors suppliers, consultants, or business associates, unless it is proven by written evidence that (i) the information is or becomes publicly known through lawful means and through no wrongful act or omission of Licensee or its representatives or employees; (ii) the information was rightfully in Licensee's possession or part of Licensee's general knowledge prior to exploring the possibility of a business transaction of mutual interest; or (iii) the information is disclosed to Licensee without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction) and did not learn of it, directly or indirectly, from Licensee.

"Confidential Information" includes, without limitation, the following:

(i) Timetrics Property and Timetrics Software (as defined hereunder) and any information about the Timetrics Recommendations, software methodology, functionality and design, capabilities, programming algorithms, and methods of calculating risk, trading strategy, procurement and hedging strategies, techniques for evaluating and selecting energy transactions, results from the Purpose, or as otherwise identified in this EULA or Contract Documents,

(ii) information, ideas and materials of a technical nature including but not limited to product lists, software, analytical tools, designs, specifications, formulae, techniques, analyses, methodologies, trading strategies, processes, approach, inventions, components, parts, computer programs, computer printouts, coding, source code, object code, systems; analytical tools, methods, mathematical algorithms, trade secrets, business methods, know-how, software designs, concepts and specifications, and other materials and concepts relating to Timetrics' products, software, services, processes, technology or other intellectual property rights;

(iii) information, ideas and materials of a business nature including but not limited to information about Timetrics business, marketing plans and ideas, salaries, the terms and pricing under this EULA,

consultant rates, trading royalties, business plans and drafts, companies with whom Timetrics is affiliated, accounting data, pricing, discounts, revenues, profits, losses, costs, expenses, products, strategies, markets, financial information, proposals, case studies, research, plans, marketing, sales, marketing and sales plans, consulting plans RFP responses, sales and marketing proposals, customers, clients, suppliers, purchasing, contract terms, product placements, operations, forecasts, consulting business models, business and financial plans and forecasts, partnership agreements, employees and salaries, incentive fees, investor relations, corporate structures;

(iv) information, ideas and materials of a prospective nature including but not limited to plans for future development and new product concepts, software plans, product development plans, prospective or unannounced products, prospective customers, draft customer lists, research and development, research and development results, research notes, product plans, prospective patent or trademark applications, product pricing structure, prospective customers;

(v) information, ideas and materials about the terms and conditions of any business agreements, including all statements of work, this EULA and other licensing agreements, contracts, license fees, pricing, discounts, and any other items defined as confidential under this EULA, or supplied as information by Timetrics to Licensee hereunder.

(vi) any information, ideas and materials about risk advisory and risk management and trading methods, algorithms, processes, tools, software, mathematics and techniques, risk management strategies, trading risk strategies, hedging and procurement risk strategies, venture capital strategies, valuation and project finance methods, power plants, contracts, project finance viability, investor returns, financial models, decision support methods and technology, and risks of any kind, financial analyses, methodologies and techniques for valuation and mitigation of risk, including risk architecture, strategies for risk mitigation and improvements used for the valuation and mitigation of risks or improvement of portfolio returns

(vii) all documents, emails, correspondence, books, papers, drawings, models, plans, maps, lists, manuals, records, workplans, schematics, specifications, blueprints, reports, research, notes, hand-written examples, spreadsheet examples, presentations, sketches, and other data or information of any kind and description, including electronic data recorded or retrieved by any means (including copies thereof),

**7.5 Confidentiality of Agreement.** The terms and conditions (including pricing and payment and customization conditions) of this EULA are and shall remain and be kept completely confidential by the parties and their directors, officers, employees, and attorneys and shall not be disclosed to any third party without the prior written consent of the other party;

**7.6 Continuing Obligation and Return of Materials:** The confidentiality obligations in Section 7 or otherwise hereunder, including but not limited to the covenants pertaining to nondisclosure shall commence retroactively from the date discussions commenced between the parties and shall survive the Term of this EULA and remain in full force indefinitely, unless Timetrics specifically and in writing agrees to release all or part of Timetrics Confidential Information from the nondisclosure restrictions imposed herein. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Licensee, nor by the rejection of any agreement between Timetrics and Licensee, by a trustee of Licensee in bankruptcy, or by the Licensee as a debtor-in-possession or the equivalent of any of the foregoing under local law. Upon termination or conclusion of the Term of this EULA and in perpetuity after such termination or conclusion, Licensee will continue to preserve the confidentiality of all such information, and at any time upon Timetrics' request immediately return to the Timetrics all documents, disks, computers, and any other devices on which any Confidential



Information might be recorded and destroy copies of all emails and correspondence. Upon conclusion or termination of the EULA or at any time at Timetrics' request, (i) Licensee shall return immediately to Timetrics all materials (in written, electronic or other form) containing or constituting Timetrics Confidential Information, including any copies and (ii) Licensee shall not use Timetrics Confidential Information in any way for any purpose. License shall be liable for any use or disclosure of Timetrics Confidential Information by its representatives (which shall include without limitation employees) which is not in compliance with obligations imposed upon the Recipient pursuant to this EULA.

**7.7 Event of Breach:** In the event Licensee knows or should reasonably know that Licensee, Operator, an employee or third party has (i) gained unauthorized access to the Timetrics Property and/or Timetrics Confidential Information (ii) has attempted to misuse or misappropriate the Timetrics Property and/or Timetrics Confidential Information (iii) is attempting to copy, reverse assemble, reverse compile or otherwise reverse engineer or violate any of the restrictions of use in this EULA or (iv) is committing (or attempting to commit) any other breach of the obligations of confidentiality or otherwise in this EULA, Licensee shall immediately notify Timetrics in writing of the full particulars of such access or disclosure, and take all reasonably requested steps requested by Timetrics to remedy the breach, and where necessary assist Timetrics (without interference in any of Timetrics' remedial rights) in the enforcement of the confidentiality provisions herein. If at any time during the Term of this EULA (or at any time subsequent to the termination of expiration of this EULA), Licensee is in breach (or alleged breach) of the confidentiality provisions or other conditions or provisions hereunder/under this EULA, Licensee shall immediately upon Timetrics' request, (i) return to Timetrics all materials (in written, electronic or other form) containing or constituting Timetrics Confidential Information, including any copies thereof and (ii) Licensee shall be prohibited to use Timetrics Confidential Information in any way for any purpose (iii) and shall comply with all other paragraphs under Section 7 or other restrictions in this EULA.

Licensee agrees that in the event of any breach or threatened breach by Licensee, Timetrics may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Timetrics against any such breach or threatened breach. Licensee acknowledges and agrees that if there is any breach of its confidentiality obligations or other provisions hereunder, it shall be liable to Timetrics for any and all damages provided under equity or law including but not limited to all special, indirect, consequential or other damages and recovery of its reasonable legal fees associated with such breach. Licensee shall ensure that its directors, officers, employees and attorneys are bound by the same terms and conditions of this EULA and that such directors, officers, employees and attorneys will be bound by an obligation to maintain the confidentiality of the Timetrics Confidential Information as set forth under this EULA. Nonetheless Licensee shall be liable for any use or disclosure of Confidential Information by its Operators, directors, officers, employees and attorneys or any other party that obtains access to such Confidential Information by or through Licensee, which is not in compliance with obligations imposed upon the Licensee pursuant to the EULA. The Parties intend that Section 7 be enforced to the greatest extent in time, area and degree of participation as is permitted by law and shall survive the Term of this EULA.

**7.8 Injunctive Relief:** Licensee acknowledges that the violation of this EULA and the unauthorized use, transfer or disclosure of the Timetrics Property and/or Timetrics Confidential Information, or copies thereof will (i) substantially diminish the value to Timetrics of the trade secrets and other proprietary interests that are the subject of this EULA; (ii) render Timetrics' remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable harm and significant injury in a short period of time

which may be difficult to ascertain thus, making any remedy at law or in damages inadequate. Therefore, Recipient agrees that Timetrics shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this EULA and for any other relief Timetrics deems appropriate. Licensee shall be obligated to immediately return all Timetrics Confidential Information and promptly return all such materials to Timetrics.

If Licensee breaches any of its obligations under this EULA, or with respect to its use or confidentiality of the Timetrics Confidential Information (or in the event of an alleged or threatened breach), Licensee acknowledges that it will render Timetrics' remedy at law for such unauthorized use, disclosure or transfer inadequate and cause irreparable harm and significant injury in a short period of time which may be extremely difficult to ascertain, thus, making any remedy at law or in damages inadequate. Therefore Licensee agrees that the Timetrics shall be entitled to equitable relief (without posting bond as a condition of such relief) to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief, the right to apply to any court of competent jurisdiction for an order immediately restraining any breach or threatened breach of this EULA as well as seeking all other remedies available under equity and law. Licensee acknowledges and agrees that if there is any breach of its obligations under this EULA, it shall be liable to Timetrics for any and all damages provided under equity or law including but not limited to all special, indirect, punitive, consequential or other damages and recovery of its reasonable legal fees associated with such breach. Such rights or remedies shall be cumulative and in addition to any other rights or remedies to which Timetrics may be entitled in law or equity.

Notwithstanding the provisions above, Timetrics shall be authorized and entitled to seek from any court of competent jurisdiction; (i) a temporary restraining order; (ii) preliminary and permanent injunctive relief; (iii) an equitable accounting for all profits or benefits arising out of such breach; (iv) an order (without a motion by Licensee to oppose the order) requesting access to all audit materials related to the breach (or alleged breach) including without limitation all information about profits and losses, systems, trading results and work product; (v) recovery of any of its legal fees and court costs. Such rights or remedies shall be cumulative and in addition to any other rights or remedies to which Timetrics may be entitled, including Timetrics right to special, indirect and consequential damages. The provisions of Section 7 shall continue in effect and survive the expiration and/or termination of this EULA (or any Term thereof). Licensee shall further be obligated to immediately return all Timetrics Property and/or Timetrics Confidential Information (and copies thereof) and upon Timetrics' request promptly return all such materials to Timetrics.

**7.9 Forced Disclosure:** If Licensee is ordered by a court or another governmental body of competent jurisdiction to disclose Timetrics Confidential Information ("Forced Disclosure"), then Licensee shall first refuse to provide such information, as the rights in and to such Timetrics Confidential Information are not owned by the Licensee and shall then promptly, at its sole cost and expense obtain a protective order or Confidential Sealing order around such a process to prohibit public dissemination of the Timetrics' Confidential Information. Conditional upon the foregoing, Licensee shall be permitted to disclose the portion of Timetrics Confidential Information, (if ordered or required under law), provided, solely and expressly that Licensee complies with the following additional requirements: (i) Licensee shall promptly notify Timetrics of the order or request by the most expeditious possible means, (and at least ten (10) business days before such disclosure, and in no event less than sufficient time for Timetrics to enforce its rights herein) and forward to Timetrics exact copies of the questions and requests for information being asked; (ii) shall consult with Timetrics with respect to taking steps to resist or narrow the scope of such



request or legal process (iii) Licensee shall use all best efforts (and no less than the same effort used to protect its own Confidential Information) to obtain a sealing order or protective order around the Timetrics Confidential Information; (v) Licensee shall at its own cost, identify and mark any Timetrics Confidential Information disclosed as Trade Secrets, Proprietary and Confidential of Timetrics and pursue all available means of maintaining the confidentiality of this material as governed by law, including but not limited to having third parties sign an NDA with Timetrics, and securing a protective order around the materials; (iv) Licensee shall join or agree (or at a minimum shall not oppose) any further motions or similar request by Timetrics for an order protecting the confidentiality of the Timetrics Confidential Information, including joining or agreeing to (or not opposing to) a motion for leave to intervene by Timetrics; and; (vi) without relieving Licensee of any of its obligations hereunder, Licensee shall not interfere or prohibit Timetrics from seeking a protective order (and/or temporary restraining order) regarding the disclosure of Timetrics Confidential Information and other relief in any disclosure of its Timetrics Confidential Information as outlined in the confidentiality provisions included herein or as permitted by law.

In any case, Licensee will (a) disclose only that portion of the Timetrics Confidential Information which Licensee's legal counsel advises is required to be disclosed, (b) use all necessary and best efforts to ensure that such Timetrics Confidential Information is treated confidentially, and use all best efforts to require the receiving party sign a Timetrics' Non-Disclosure Agreement directly with Timetrics (with copies of NDA's being supplied promptly to Timetrics by Licensee) and (c) notify Timetrics promptly of the items of Timetrics Confidential Information to be disclosed, and (d) comply with all other disclosure restrictions within this EULA. Further Licensee shall assume all liability for any unauthorized disclosure or misuse of any Timetrics Confidential Information disclosed under this Section 7.8, which is not in compliance with the provisions in Section 7 or other provision hereunder.

**7.10 Survival.** Licensee's obligations under this Section 7 will survive the termination of this EULA or of any license granted under this EULA for whatever reason.

## 8. SCHEDULE AND FACILITIES

**8.1 On-Site Facilities:** Unless otherwise stated, Timetrics shall provide its own office space and office services including but not limited to ordinary computers, laptops, telephone, internet access and ordinary computer support which shall be considered part of the Fees hereunder. Any specific hardware and software customizations required, shall be determined in Appendix B hereunder and invoiced separately as contemplated in the I&C Fees if any.

**8.2 Off-Site Facilities:** In the event Licensee requires that Timetrics attend off-site meetings or to travel, Licensee shall be obligated to provide Timetrics with necessary office space and/or accommodations and in accordance with Section 10.2 will reimburse Timetrics for its Expenses, including but not limited to out-of-pocket travel costs, airline, car service, accommodations, office space and office services such as telephone, internet access, photocopier, and personal computer services and support, to be used by Timetrics exclusively in the performance of its obligations to the Licensee at off-site locations under this EULA.

**8.3 Schedule and Timetable:** Licensee and Timetrics agree to meet in good faith to decide a timetable of tasks to be performed in the EULA and/or Engagement Letter. Timetrics will use reasonable and diligent efforts to complete the performance of the services within any agreed upon time-frame. The timetable shall be made to the best knowledge of both parties given the information available prior to starting the EULA and/or Engagement Letter, recognizing that unforeseen events, new information, management discussion

and analysis results may cause a deviation to that timetable. Each party shall provide the other party with notification of any issues, which do or might cause a deviation from the agreed upon timetable and such notification shall identify the problem, its cause, its forecasted impact on such timetable.

**8.4 Holidays and Vacation:** The following shall not be considered a failure to perform services or provide license hereunder or a material breach of Timetrics: (i) any statutory holiday; (ii) any medical leave, sickness or ordinary absence of its principal Samantha S. Kumaran as would ordinarily be covered under an employment health benefits contract; (iii) any government, regulatory, court order or proceeding that requires Timetrics participation or time and involvement or; (iv) any reasonable vacation time, which shall be maximized at six weeks a year.

## 9. IMPLEMENTATION AND CUSTOMIZATION FEES

**9.1 Implementation:** In consideration of the Implementation and Customization Fees ("I&C Fees") charged and determined in the Engagement Letter and Appendix B, Timetrics shall provide implementation programming and computer support to manage the computer processing of the Trading Strategy and the integration of live data (position management data) from the Licensee's Systems as well as the. Any data input shall be provided by Licensee as digital downloads, spreadsheets, database output, csv transfers and other electronic methods to be decided upon during the course of the work being performed. Any manual entry and unusual manual conversion of data shall be performed by employees of the Licensee and identified separately in the Engagement Letter, with the costs in I&C Fees. The implementation work shall include without limitation, converting processing time to high-speed computing power, hardware, software and source code modifications to incorporate the computing requirements, automating position uploads from License Systems and will address data format and field matching, modifications to the system to read data files, integration of market price data, both historic and current, and other computer related matters such as code optimization, making sure that all Licensee's business data integrates into the Timetrics Property and is machine readable in order to compute the Trading Strategy, reporting and calculations.

**9.2 Customization of Software:** In consideration of the I&C Fees, Timetrics shall also include in the I&C Fees, reasonable customization of the Timetrics Property and related hardware, to specifically address the requirements of the Licensee's Portfolio to meet the Purpose hereunder. The I&C Fees contemplated hereunder, shall include the modification and customization of the foregoing within the time frame allocated. The customization shall be specific to Licensee's specific portfolio and reporting requirements. Any customizations, modifications and Updates performed under this EULA, shall be the property of Timetrics.

**9.3 Hardware Modifications:** Licensee agrees and understands, that in certain circumstances, Timetrics may be required to modify its hardware to handle the computing power required for Licensee's portfolio and the number and speed of calculations. For example, if the magnitude of calculations exceeds standard computing power, or if real-time or high-speed processing of data is needed hardware modifications would be made. Such hardware modifications (if any) will be invoiced at cost, without mark-up, and included in the schedule of I&C Expenses, in Appendix B and subject to Licensee's approval prior to purchase. Any hardware modifications, required under this EULA, shall be the property of Timetrics.

**9.4 Third Party Software Packages:** Should Timetrics need to purchase any specific third party software packages or specific programs subject to the approval of Licensee, such third party software packages will be billed as additional items and expenses to be reimbursed. Any specific Third Party Software programs to be



purchased, will be listed in the schedule of I&C Expenses in Appendix B.

**9.5 Training and Support:** Timetrics shall provide training and support services to assist Licensee with the use of Timetrics Software as agreed upon in the Implementation and Customization Fees. The schedule and fees associated with Training and Support shall be determined and itemized in the I&C Fees and agreed upon prior to the Initiation and Launch Term and included in Appendix B.

**9.6 Acceptance Tests:** Subsequent to completion of the Demonstration Term, the parties agree to continue use and license of Timetrics Property, Timetrics will provide the following acceptance tests, prior to Licensee's go-live or use of Timetrics Software in a production environment. The acceptance tests and their respective procedures and protocols will be listed in Appendix B. Any acceptance tests must be done in the presence or and with the cooperation of Timetrics. A Certification of Acceptance shall be provided immediately after completion of the acceptance test.

- (i) **Factory Acceptance Test (FAT):** The parties will conduct a Factory Acceptance Test ("FAT"), to certify Licensee's acceptability of the numerical results and any reporting specifications. The FAT's procedures and sign-off of acceptance shall be determined and agreed to and signed and executed in Appendix B. the Licensee agrees and acknowledges that for the Demonstration Term, no FAT will be required.
- (ii) **Site Acceptance Test (SAT):** In the case of License Type B or Type C, the parties will conduct a Site Acceptance Test ("SAT"), to certify Licensee's acceptability of the Timetrics Software in an on-site, web-enabled environment, and its compatibility with Licensee's computer equipment, security and other dial-up considerations. The SAT will only be necessary where Licensee's Operators are utilizing the Software. The SAT's exact procedures and sign-off of acceptance shall be determined and agreed to and signed and executed in Appendix B, if required. The Licensee agrees and acknowledges that for the Demonstration Term, no SAT shall be required.

#### 9.7 Security

- (i) **Email Communication:** Licensee recognizes and accepts the risks associated with communicating by Internet e-mail, including (but without limitation) the lack of security, unreliability of delivery and possible loss of confidentiality and privilege. Unless Licensee requests in writing that Timetrics does not communicate by Internet e-mail. Licensee assumes all responsibility or liability in respect of risk associated with its use.
- (ii) **Access to Licensee's Systems:** Licensee shall assume responsibility for the security, passwords and level of encryption for any access provided by Licensee to Timetrics hereunder, to Licensee's servers, data, positions, web-sites or other transmissions originating from Licensee's Systems. Licensee shall indemnify and hold Timetrics harmless from any use or access to Licensee's Systems that is the provided hereunder by Licensee.
- (iii) **Access to Timetrics Systems:** Under a License Type-A, Timetrics expressly shall not provide internet or web-enabled access to the Timetrics Property. If Licensee upgrades to a web-enabled License Type B, then the parties will determine the security requirements and specifications and any associated I&C charges will be itemized in Appendix C. Under all License Types, Timetrics shall provide ordinary business firewall and

security for its internet access. If Licensee requires additional security compliance and interfaces, including but not limitation any security ID's, dongles and password encryption, security reports and compliance, SSAE-16 compliance, or SOC II, then those optional security interfaces shall be subject to Licensee's request and specification. Such security modifications (if any) will be invoiced at cost, without mark-up, and included in the schedule of I&C Expenses in Appendix B and subject to Licensee's approval prior to purchase. Any hardware modifications, required under this EULA, shall be the property of Timetrics The parties agree, that no additional security requirements are needed during the Demonstration Term and Implementation Term as the license type is not web-enabled.

#### 9.8 Maintenance

During the Term of this License, Timetrics shall be responsible for maintaining its computer equipment required for a License Type A and License Type B, and no additional maintenance fees for computer support shall be required or charged hereunder.

#### 9.9 Optional Consulting Support

Any consulting support shall be at the mutual option and consent of the parties as specified in the Engagement Letter. Consulting services and support shall be separate and distinct from the I&C services, and support shall include without limitation other business advisory, general risk advisory, risk management consulting on policy and procedures and risk mentoring, training and consultations with management. Consulting support, shall be subject to the payment terms in Section 10.3.(iv) hereunder unless otherwise stated in the Engagement Letter, and shall not be included in the I&C Services contemplated hereunder.

### 10. LICENSE FEES AND PAYMENTS.

**10.1 License Fees:** In consideration of the license rights granted in Section 2 herein above, and work to be performed under Section 9 or otherwise hereunder, Licensee shall pay the Software License Fees ("License Fees"), Implementation and Customization Fees ("I&C Fees"), and optional Consulting Fees and other fees as described hereunder, all collectively ("Fees") for the Timetrics Property as set forth on Appendix A and Appendix B attached hereto.

#### (i) Bundled Software License Fees:

Timetrics has agreed to provide the Licensed Modules of Timetrics Software under a Software-as-a-Service License ("SaaS" License) which shall have a bundled price basis whereby Timetrics shall provide the license and access to all Licensed modules included in the price ("Bundled Price"). Details of the Bundled Price are provided in the Engagement Letter Addendum A.(i). The foregoing discount, is subject to the terms and conditions hereunder, and uninterrupted continued license of the Timetrics Software hereunder.

#### (ii) Un-Bundled Software License Fees:

Timetrics has provided substantial discounts to Licensee in the Bundled Price provided in the Engagement Letter, Addendum A.(ii) for the Licensed Modules. Should this EULA be terminated, or interrupted or in the event of any breach by Licensee, Timetrics reserves the sole right to "unbundle" its Software License Fees and license its software on a module-by-module basis ("Unbundled Price") as described in the Engagement Letter, Addendum A.(ii). Licensee acknowledges that the unbundled retail pricing for individual modules, is provided for in the Engagement Letter, Addendum A.(ii)



**10.2 Expenses:** Expenses, including without limitation, a charge on account of all reasonable out-of-pocket expenses incurred by Timetrics associated with the license, including travel, meals, accommodations, long distance telecommunications, external photocopying, delivery, postage, clerical assistance and database research will be rendered on a monthly basis as the EULA and Engagement progresses, collectively ("Expenses"). Timetrics will not incur any single Expense greater than five hundred dollars (\$500) without the Licensee's prior approval.

**10.3 Payment Schedule:**

(i) **License Fees:** License Fees for Timetrics Property, are invoiced on a quarterly basis, are non-refundable and due in advance of the upcoming three month cycle. The payment of License Fees shall be on a 'quarterly period', and quarterly periods shall be defined in three (3) month intervals from the start date of the Term of this EULA. The first of each quarter shall be defined by the dates set forth in Appendix B with License Fees due and payable in advance on or before the first of the quarter for which the software is deemed to be in use. License Fees for Timetrics Property and third party products are due upfront as a deposit against the quarterly usage. Timetrics shall submit an invoice thirty (30) days prior to the ensuing quarterly period and Licensee shall remit payment on or before the first date of the ensuing quarter as listed in Appendix B. All payments for Software Licensee Fees shall be made via direct deposit to the Bank Account listed in Appendix E.

(ii) **I&C Fees:** The I&C Fees shall be paid in bi-monthly installments in accordance with schedule listed in the Engagement Letter. Other than as specified in the EULA, no other maintenance, support or additional payments for software usage are required by Licensee during the Term.

(iii) **Trading Royalty:** As an express condition of this EULA, Licensee shall also be obligated to pay Timetrics all Trading Royalties (as defined in the Engagement Letter) and all other Incentive Compensations as specified therein under the terms and conditions agreed upon therein. Fees that are determined as Trading Royalty shall be paid on a monthly basis as agreed to in the Engagement Letter and/or Terms and Conditions, or where not specified shall be paid monthly and invoiced on the 30<sup>th</sup> of the month due and payable immediately upon receipt of profits from the Licensee at the close of each Nymex delivery month.

(iv) **Consulting Fees (Optional):** Subject to mutual consent and as will be specified in any extension of the Engagement Letter, the parties may agree that Timetrics will provide consulting services during the Term. Unless otherwise agreed to in writing in the extension to the Engagement Letter, Consulting Fees shall be invoiced to the Licensee in bi-monthly installments and shall be due when rendered, and paid net fifteen (15) days from the date of invoice. Other than as specified in the Engagement Letter, no other Consulting Fees or services will be required during the Term of this EULA.

(v) **Expenses:** Payment of all Expenses (as defined in 10.2 above), shall be due when rendered, and paid net fifteen (15) days from the date of the invoice submitted to the Licensee. Timetrics shall submit an invoice to Licensee for incurred Expenses no more frequently than bi-monthly upon receipt of the Expenses incurred.

(vi) **Early Termination Fees:** The pricing and any discounts in Fees hereunder, contemplate the Licensee's full completion of the Timetrics Software through the completion of the Term. For any Term longer than six (6) months, Licensee agrees that in any early termination of the Term, shall be subject to an early termination fee of forty percent (40%) of the outstanding total Contract Price of License Fees, and shall not include a refund of the existing quarterly rental fees ("Early Termination Fee"). For clarification, for

an annual Term of License fee of \$26,500 per quarter, whereby Licensee terminates at the end of 5 months, the Early Termination Fee shall be calculated as 40% \* (\$53,000) = \$21,200

(vi) **Currency/No deductions:** All amounts payable hereunder by Licensee shall be payable in United States funds without deductions for employment taxes, assessments, fees, or charges of any kind.

(vii) **Inflation and Annual Increases:** The License Fees in Appendix B are quoted as of Calendar Year 2013 and do not take into consideration GDP or inflation. As such, Software as a Service (SaaS) License Fees will increase on an annual basis by the actual cost of business increases in NY which shall equal the total of a) the actual NYC Property Tax % increase measured to Timetrics in that Calendar Year and b) New York Metro CPI-U real inflation on an annual basis as reported at year end on the website <http://www.bls.gov/ro2/cpinynj.htm>. As a courtesy to Licensee and provided there is no in Licensee is in breach of this EULA or other Contract Documents, and that there is no event of termination or other interruption to the services, Timetrics will not increase its pricing until Calendar Year 2014.

**10.4 Late Payments:**

(i) **License Fees:** Failure of Licensee to make payment of the License Fees on or before the first date of the ensuing quarter, shall not be deemed termination of Licensee's use of Timetrics Software for such ensuing quarter, unless written notice of termination has been provided in accordance with the provisions of Section 16.2 in the Termination provisions. Timetrics shall charge a late payment interest charge of 1.5% per month, accruable on a daily basis from the date payment was due, for the days the License Fees payments that are late. In addition, in the event late payment is not cured within thirty (30) days of written notice from Timetrics, Timetrics shall reserve the sole option and right to delay or suspend use of the Timetrics Property until payment is made in full without breach or financial penalty to Timetrics in Licensee Fees due and payable that quarter.

(ii) **I&C Fees, Consulting Fees, Early Termination Fees and Expenses:** Late fees for payment of I&C Fees, Consulting Fees, Early Termination Fees and Expenses shall be assessed at 1.5% per month, accruable on a daily basis, from the date payment was due, for each day that the payments are late. In addition in the event late payment is not cured within thirty (30) days of written notice from Timetrics, Timetrics shall reserve the right to delay or suspend use of the Timetrics Property hereunder until payment is made in full without breach or penalty to Timetrics.

(iii) **Rights to Terminate:** If payments are past due sixty (60) days, Timetrics reserves the right to suspend or delay its performance of services (and/or providing Timetrics Property) under this EULA without financial penalty to Timetrics in future scheduled payments or project termination, and resume the access to the Timetrics Property and reinstate the EULA once payment is made. In accordance with Section 16.5 and Section 10.4.(ii) Timetrics shall reserve the right to terminate this EULA if late payment of any Fees or Expenses is not cured in full within sixty (60) days from the first date of late payment. Such termination shall not reduce or eliminate the obligation of Licensee to pay all Fees and Expenses, up to the date of termination (or as specified hereunder for the complete quarter of the License Fees) as well as any Early Termination Fees.

**10.5 Taxes.** All Fees hereunder and other charges do not include any (i) applicable goods, services, sales, value-added, lease, license, use, personal property, excise, consumption, and other taxes, tariffs and duties taxes, or any other taxes or duties whether presently in force or imposed in the future in any jurisdiction, within or outside the United States, (including without limitation the federal, state and local governmental entities in the United States);



(ii) any freight, insurance and installation charges, and; (iii) import or export duties or like charges, collectively the ("Taxes"), on the licensing and use of Timetrics Property hereunder. Any such Taxes shall be assumed and paid by Licensee without deduction from the Fees and charges hereunder. Taxes shall be due and payable upon receipt of invoice from Timetrics and notice of such Taxes shall be forwarded to Licensee within upon receipt or assessment of same and not later than ten (10) business days from receipt of same by Timetrics.

**10.6 Tax Assessment:** If Timetrics receives any tax assessment or other notice (collectively the "Tax Assessment") from any governmental taxing authority pertaining to this EULA, providing that such Taxes are due and payable from Timetrics, Timetrics shall give Licensee written notice of the Tax Assessment within ten (10) business days of receipt of such and Licensee shall pay to Timetrics or the taxing authority the amount set forth as due in the Tax Assessment and on the earlier date of (a) the date due by the taxing authority or (b) within thirty (30) days of receipt of such written notice from Timetrics. Licensee agrees to pay, indemnify and hold Timetrics harmless from such Tax Assessments including any penalties and interest, and all government permit or license fees and all customs and similar fees, levied upon the use or distribution of the Timetrics Property which Timetrics may incur in respect of this EULA, and any costs associated with the collection or withholding of any of the foregoing items, provided that Timetrics shall notify Licensee in a timely manner as reasonably permitted of any such tax notices and shall forward all such correspondence to Licensee no later than thirty (30) calendar days after such receipt thereof.

**10.7 Past Due Accounts:** If it should become necessary (after sixty (60) days past due) that Timetrics shall need to commence legal action, collections, or enter into legal proceeding to collect past due, late payments, unpaid invoices, Taxes or Tax Assessments hereunder, then Licensee shall absorb all such out of pocket third party legal fees, collections fees, costs and expenses incurred by Timetrics in connection with said collections, legal proceeding or action and provided that said collections, legal proceeding or action shall be resolved in Timetrics favor.

**10.8 Disputed Invoices:** If Licensee disputes an invoice or accounting, it shall notify Timetrics within fifteen (15) business days of receipt of such invoice or accounting for hours, and may withhold the disputed portion but will pay the undisputed portion. Failure to notify Timetrics of any dispute in the invoice within this time period will deem the invoice valid and fully payable. Both parties agree to resolve promptly and in good faith any disputed invoices. In the event that such dispute is not resolved within thirty (30) days, no interest, carrying charges or other penalty will be incurred or paid on any unpaid or disputed invoice unless it is determined that Timetrics is due all or a portion of the disputed amount. Interest shall be paid on amounts that were disputed and not paid but were due to Timetrics. Timetrics shall be entitled to be reimbursed for its reasonable legal fees and expenses associated with a dispute regarding unpaid invoices in the event that such dispute is resolved in favor of Timetrics. Without limiting its rights or remedies, Timetrics shall have the right to halt or terminate entirely its services (and/or providing its license to Timetrics Property) or to suspend or delay its performance of services (and/or providing its license to Timetrics Property) until such time as the dispute is resolved or payment is made and resume the EULA once payment is made. Licensee understands and agrees, that an interruption of license, shall be deemed a cause to pro-rate the Licensee Fees due for the quarter.

## 11. LIMITATION ON WARRANTIES

**11.1 Timetrics Warranties:** Timetrics represents and warrants to Licensee that; (i) Timetrics has the corporate power and authority to enter into this EULA and perform all of its obligations hereunder; (ii) Timetrics will provide any services and/or license to software



hereunder in good faith with qualified personnel in a competent and workmanlike manner in accordance with applicable industry standards.

**11.2 Disclaimer of Warranty:** EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES SET FORTH IN THIS SECTION, TIMETRICS IS PROVIDING SERVICES AND LICENSING THE SOFTWARE "AS-IS" AND MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, UNDER THIS EULA AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION THE SOFTWARE'S CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, OR THAT USE OF THE TIMETRICS SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT TIMETRICS SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, OR THAT TIMETRICS SOFTWARE WILL OPERATE IN NON-SUPPORTED PLATFORMS, OPERATING SYSTEMS OR DATABASES, OR IN COMBINATIONS WITH OTHER SOFTWARE WHICH MAY BE SELECTED FOR USE BY LICENSEE. TIMETRICS SPECIFICALLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

**11.3 Licensee Warranties:** Licensee warrants and represents that (a) it has the corporate power and authority to enter into this EULA and perform all of its obligations hereunder (b) it is a financially solvent corporation operating in good standing under applicable state or federal laws, with no known legal actions (pending or otherwise) that would impair its rights or obligations hereunder (c) this EULA has been duly and validly executed and delivered by Licensee and constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, except as provided for by law and equity, (d) it has the full legal right to grant to Timetrics the data, position output and other materials provided by or on behalf of Licensee for inclusion in the Timetrics Software and that the aforementioned data and materials do not infringe upon any third parties proprietary rights (including without limitation United States patent, copyright or trade secret rights); and (e) it will not utilize any Timetrics Property licensed hereunder as a basis to improve any of Licensee's Systems with similar capabilities, functions, calculations, metrics, design, formulae, reporting and/or features.

## 12. LIMITATION ON LIABILITY

**12.1 Licensee acknowledges and agrees that the consideration which Timetrics is charging hereunder does not include any consideration for assumption by Timetrics of the risk of Licensee's final use, application or integration of the results of Timetrics Property, services or any work product hereunder into Licensee's business whatsoever and/or any consequential, special, indirect, contingent, punitive, exemplary and incidental damages, costs, expenses or losses of any kind, in anyway arising out of or related to the licensing or use of the Timetrics Property, work product or services performed hereunder. Licensee shall assume all responsibility for use (or non-use) of the services, work product or Timetrics Property in a trading floor and production environment.** Accordingly, based on the pricing charged hereunder, Licensee agrees that Timetrics shall not be liable to Licensee under any circumstance, even if it has been provided previous knowledge of such possible circumstance, for any actual or threatened actions, damages, claims, liabilities, costs, consequential, special, indirect, incidental, contingent, punitive or exemplary damages, costs, expenses, or losses (including without limitation, trading floor losses, business losses, lost profits, failure to realize expected savings and/or opportunity costs, lost financial opportunities, lost business revenue, project failures, generation or customer losses,

Initialed (Licensee)

Initialed (Timetrics)



expenses, losses) or any other commercial or economic loss of any kind whatsoever in any way arising out of or relating to the license or use of Timetrics Property, work product, or the services performed hereunder. The foregoing shall apply without limitation to all claims, damages or causes of action of any kind including without limitation tort, negligence, breach, failure to perform and breach of warranty, even if Timetrics has been informed in advance of the possibility of such thereof.

**12.2** Timetrics and Licensee agree that Timetrics' maximum aggregate liability to Licensee or any person, firm or corporation whatsoever arising out of or in the connection with this EULA and/or any Engagement Letter or for any use of the Timetrics Property, services or work product, provided to Licensee hereunder, regardless of the cause or form of action, (including but not limited to whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or for any and all direct harm, liability, expense, cost, loss or damage, whether in negligence, tort, contract, equity, or otherwise) shall be strictly limited by and shall not exceed, in the aggregate in respect of all incidents and occurrences, the actual price paid to Timetrics by Licensee for the Timetrics Property for the most recent quarterly period License Fees and three months of I&C Fees, paid by Licensee to Timetrics whose license, use, or other employment gives rise to the liability. For clarification, the maximum liability of Timetrics under this EULA and/or Engagement Letter shall not be greater than the most recent three (3) months quarterly License Fees and the most recent (3) months of I&C Fees paid by Licensee to Timetrics. Any incident or occurrence may only be claimed once, and may not be repeated for any subsequent quarters. In any action, claim, loss or damages arising out of this EULA and/or Engagement Letter, Licensee agrees that Timetrics' liability will be several and not joint and several.

**12.3** Further, Timetrics shall not be responsible for nor shall incur, any liability, damages, loss, obligations or responsibility whatsoever (whether in equity, contract, tort or otherwise) for any harm, loss, reliance, damages, expenses, costs, suit, claim or demand, whatsoever, that is made (i) by any person who is not a party to this EULA and/or Engagement Letter; or (ii) that may arise in any connection with or result from any promise, advice, arrangement, agreement, statement, use of Timetrics Property, revenue increase, trading profits, support or maintenance, representation, warranty, or information whatsoever, that may have been made to Licensee by Timetrics or any other person concerning any aspect of the Timetrics Software or Timetrics Property, and which has not been expressly included in this EULA and/or Engagement Letter;

**12.4** The essential purpose of this provision is to limit the potential liability of Timetrics arising out of this EULA and/or Engagement Letter. The parties acknowledge that the limitations set forth in this Section 12 are integral to the amount of consideration levied in connection with the license of the Timetrics Property and any services rendered hereunder and that, were Timetrics to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

**12.5 Limitation Period:** No claim or action regardless of form, may be brought by Licensee against Timetrics, arising under or related to this EULA and/or Engagement Letter or the subject matter thereof, more than one year (1) after termination or expiration of the Term of this EULA and/or Engagement Letter.

**12.6. Definition of Timetrics:** For purposes of all sub-paragraphs under this Section 12 (12.1 to 12.6), the term Timetrics ("Timetrics") shall include its owners, employees, representatives, officers, directors, agents, affiliates, licensors, contractors, distributors, consultants, associated corporations, programmers, associated and affiliated entities, software providers, vendors, suppliers and any other Resource and collectively their respective

owners, directors, officers, partners, agents, representatives, contractors, personnel and employees of each of the foregoing. The provisions of this section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

### 13. TIMETRICS INDEMNIFICATION

**13.1** Timetrics will indemnify and hold Licensee harmless and will defend or settle any claim, suit or proceeding brought against Licensee that is based upon a claim that the content contained in the Timetrics Property as licensed under this EULA, infringes a copyright or violates an intellectual or proprietary right protected by United States law ("Claim"), but only to the extent the Claim arises directly out of the use of the Timetrics Property.

**13.2** Such obligations under Sections 13.1 are conditioned upon the following terms and conditions; (i) Licensee must notify Timetrics in writing of any Claim within ten (10) business days after Licensee first receive notice of the Claim; (ii) Licensee shall provide Timetrics with, at no cost, such assistance and cooperation as Timetrics may reasonably request from time to time in connection with the defense of the Claim and that; (iii) Licensee will promptly furnish to Timetrics copies of any and all documents (inclusive of all correspondence and pleadings other than attorney-client communications) pertaining thereto; (iv) Timetrics shall have sole control over any Claim (including, without limitation, the selection of counsel and the right to settle on Licensee's behalf on any terms Timetrics deems desirable in the sole exercise of its discretion); and (v) Timetrics shall pay actual damages, and costs awarded against Licensee (or payable by Licensee pursuant to a settlement agreement) in connection with a Claim, to the extent such damages and costs are not reimbursed to Licensee by insurance or a third party, and to an aggregate maximum not to exceed the purchase price paid for the Timetrics Software (or the most recent quarterly License Fees paid by Licensee to Timetrics for use of the Timetrics Software).

**13.3** Notwithstanding the foregoing, Timetrics' indemnity obligations under Section 13.1 above will not apply, (and Timetrics shall have no liability hereunder) when the alleged infringement would not have occurred but for the following reasons and arising from: (i) modifications made to the Timetrics Property that were not authorized by Timetrics; or (ii) the combination of the Timetrics Property with any products not provided by Timetrics; or (iii) use of the Timetrics Property in combination with non-Timetrics software, including without limitation Licensee's Systems or other models, processes, materials, data or equipment, if the infringement was caused by such use or combination; or (iv) any modification or derivation of the Timetrics Property not specifically authorized in writing by Timetrics; or (v) use of third party software; or (vi) use of the output of the Timetrics Property (such as data dumps of risk measures) with any third party systems or Licensee's Systems, which would infringe upon the intellectual property rights of such third parties; or (vii) customization requests made by Licensee to modify the Timetrics Property which may infringe upon a third parties intellectual property rights; or (viii) where Licensee continues such alleged infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement.

**13.4** In the event that Licensee's use of the Timetrics Property or portion thereof in accordance with this EULA is enjoined in an action as described in Section 13.1 above, or Timetrics reasonably believes that it will be so enjoined, Timetrics shall, at its option, either: (i) procure for Licensee the right to continue using the Timetrics Property (ii) modify or replace the Timetrics Property or portion thereof to make it non-infringing (iii) remove the portion of the Timetrics Property that is under alleged infringement providing it does not provide a substantial loss of functionality to Licensee.



**13.5 Sole and Exclusive Remedy:** Licensee may elect as its sole option and remedy to either (i) cease using only such part of portion of the Timetrics Property under alleged infringement, if it deems in its judgment that removing said portion shall not provide a substantial loss of functionality to Licensee and provided that execution of this provision 13.5.(i), shall not construe termination of the entire EULA hereunder and shall not warrant to Licensee any portion or refund of fees paid to Timetrics; or (ii) cease using the Timetrics Property in its entirety under the termination provisions of Section 16.5 hereunder. In this sole reason for termination Timetrics shall refund on a pro rata basis any License Fees paid in advance by Licensee to Timetrics and cease use of the Timetrics Property and in the case of SaaS offsite, cease generating reports on Licensee's behalf, without further penalty to Timetrics.

**13.6** The remedies specified in this Section 13 will be Licensee's sole and exclusive remedies in connection with any alleged or actual infringement or misappropriation of any intellectual property rights by the Timetrics Property.

#### 14. LICENSEE INDEMNIFICATION

**14.1** Licensee shall indemnify, defend and hold harmless Timetrics and/or its owners, employees, representatives, officers, directors, agents, affiliates, licensors, contractors, distributors, consultants, associated corporations, programmers, associated and affiliated entities, software providers, vendors, suppliers and any other Resource and collectively their respective owners, directors, officers, partners, agents, representatives, contractors, personnel and employees of each of the foregoing (collectively, the "Indemnified Parties") from and against any third party claims, demands, causes of action, Losses, and any liabilities, damages or expenses whatsoever, arising out of, or relating to in any manner from; (i) the Licensee's use of Timetrics Property hereunder, the services or any work product of Timetrics, in whole or in part, (including without limitation its use with its retail customers, risk oversight, external regulators or any investigation or proceeding arising therefrom); (ii) the Licensee's failure to comply with any rule, law or regulation and under the Laws and/or any investigation or hearing thereof (iii) the exercise or practice of the license granted hereunder, based upon the use of the Timetrics Property by Licensee, its sub-licensees, if any, its subsidiaries or their officers, employees, agents or representatives; (iv) any actions arising on account of Licensee's requests of modification or enhancement to the Timetrics Property (including customizations requested by Licensee, modifications of reports, report formats, and design specifications) that infringes the copyright, trade secrets or intellectual property rights of any Third Party; (v) any misuse or adaptation of the Timetrics Property (not performed by Timetrics) that infringes upon any third party intellectual property rights; (vi) the Licensee's violation or claimed violation of infringement of a third party's rights or a third party's intellectual property or proprietary rights (vii) any data or materials provided by Licensee to Timetrics to be included in or utilized with the Timetrics Property; (viii) any breach of confidentiality in Timetrics' Property or other Timetrics Confidential Information that violates the provisions of this EULA or Contract Documents, and gives cause for the aforementioned claim, demand or action; (ix) any unlawful use to which Licensee puts the Timetrics Property; or (x) any business transaction or trade contemplated by Licensee related to the use of or results from the Timetrics Property, the license granted under this EULA or Timetrics' services or engagement hereunder, or any regulatory investigation or proceeding arising therefrom.

The foregoing indemnifications shall apply to and against any losses, claims, demands, suits, damages, costs, fees and expenses, including but not limited to Timetrics' then-current hourly fees for time incurred, current software License Fees, government investigations, regulatory requirements, liabilities (or actions in respect thereof), joint or several, and all other related costs including reasonable attorneys fees (collectively "Losses") relating

to, arising in any manner from, or based upon, the foregoing claims.

**14.2** The Indemnified Parties will have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise unless otherwise agreed to in writing, subject to Paragraph 14.3 and 14.4 and otherwise herein Licensee, shall after receiving notice of any such proceeding, immediately provide notice to the Indemnified Parties, so that the Indemnified Parties may (without further notice to the Licensee) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of the Licensee.

**14.3** Licensee will also promptly reimburse any Indemnified Party for all Losses and expenses (including without limitation Timetrics' hourly fees, SaaS License Fees, disbursements, travel expenses and charges of legal counsel) as incurred, in connection with the investigation of, preparation for or defense of any pending or threatened claim relating to, arising in any manner from, or based upon the aforementioned causes. The Indemnified Parties shall have the right to retain its own counsel to assist in the defense of such claims, losses, suits, liabilities, investigations, actions (pending, threatened or otherwise) and Licensee agrees to give Timetrics' legal counsel full access to any and all information pertaining to the Timetrics in the aforementioned claims and actions and the right to participate in the defense of any such claims or investigations.

**14.4** In connection with this Paragraph 14, the Indemnified Parties shall have the right to retain its own counsel to assist in the defense of such claims, losses, suits, liabilities, investigations, actions (pending, threatened or otherwise) subject to the reimbursement provisions in 14.3. Further, Timetrics reserves the right to approve in writing any settlement to be made on Timetrics' behalf that requires the public disclosure of Timetrics' name or otherwise affects Timetrics' goodwill, financial status, or limits the Timetrics' ability to do business. Further, Licensee agrees to give the Timetrics' legal counsel full access to any and all information pertaining to Timetrics in the aforementioned claims and actions and the right to participate in the defense of any such claims.

#### 15. REGULATORY OVERSIGHT.

**15.1** Licensee agrees to notify Timetrics promptly of any request received by Licensee from any court, government entity or applicable regulatory authority or third party action with respect to this EULA, the services, work product or license of Timetrics Property hereunder and/or any other Timetrics' advice, work product, trading strategies, risk reports, financial statements, or any related document.

**15.2** If Timetrics is required by law, pursuant to government regulation, subpoena, or other legal process, governmental order pursuant to any statutory authority, or a public oversight board in respect of reporting issuers pursuant to any contractual or statutory authority, or any third party claim or action or otherwise or requested by Licensee to participate in any of the foregoing, collectively ("Regulatory/Third Party Process") or is requested or required to produce documents or personnel as witnesses arising out of this EULA and/or Engagement Letter and Timetrics is not a party to such proceedings, Licensee shall indemnify Timetrics for its involvement in any such proceedings and reimburse Timetrics for all Losses, including without limitation reimbursement of its time spent at hourly fees at standard billing rates for professional time and expenses, current software License Fees, reasonable legal fees, incurred in responding to any such proceedings or requests, as an express condition of Timetrics being able to participate in any such proceeding. For purposes of this Section 15.2, it is expressly agreed that the term "Timetrics" shall include its Indemnified Parties.



**15.3** When requested or required by law, pursuant to any Regulatory/Third Party Process that Timetrics provide access, information, and/or documents, including copies thereof relating to Licensee's affairs, Timetrics will use all reasonable efforts to refuse to provide information and documents over which Licensee asserts legal privilege or which has been acquired or produced in the context of the EULA and/or Engagement Letter for legal counsel by or on behalf of Licensee, except where providing such copies, access, information or documents is required by law, pursuant to the Regulatory/Third Party Process. Where Licensee provides any document to Timetrics in respect of which Licensee wishes to assert legal privilege, Licensee shall clearly mark such document "privileged" and shall otherwise clearly advise Timetrics that Licensee wishes to maintain legal privilege in respect thereof.

**15.4** In the event of a Forced Disclosure under such Regulatory/Third Party Process, Licensee shall without limitation, abide by the Forced Disclosure provisions contained in the confidentiality provisions of the Non-Disclosure Agreement merged and incorporated in full force hereunder. Without limiting its obligations thereunder, Licensee shall take all necessary measures to obtain a sealing and protective order on behalf of Timetrics around such disclosures at its sole cost and expense. In all Regulatory/ Third Party Processes, Licensee agrees and acknowledges that Timetrics Confidential Information shall be treated without exception as confidential and proprietary information, and in a manner no less consistent than the Licensee treats its own confidential and proprietary information. If Timetrics is not a party to such proceedings, Licensee shall reimburse Timetrics for all Losses incurred in responding to such proceeding and shall promptly reimburse costs and legal fees to Timetrics, to enable its facilitation to obtain a protective sealing order and any other necessary actions.

## 16. TERMINATION.

Any termination of this EULA shall immediately mean termination of the Engagement Letter. For the purposes of Section 16, termination of the EULA shall mean termination of both the EULA and the associated Engagement Letter.

**16.1. General Termination:** Unless terminated sooner in accordance with the terms hereunder, the EULA shall terminate at the end of the Term as specified in Section 3.1 hereunder.

**16.2 Termination by Licensee of Software License:** Licensee may terminate its license of the Timetrics Software this EULA, prior to the end of the Term hereunder, at any time upon written notice to Timetrics, provided Licensee agrees that; (i) it shall provide written notice to Timetrics no later than thirty (30) days prior to the first date of such quarterly period, for which its election not to use the Timetrics Software shall go into effect, "Advance Notice Period" and such termination to be effective on the first date of the next quarterly period; and (ii) no refunds shall be due to Licensee for any current or partial quarters of license or usage/use; and (iii) it shall pay any Early Termination Fees as defined hereunder, if applicable and; (iv) it shall abide by the Post-Termination provisions in 16.8 hereunder.

In the absence of any such notification, Timetrics shall deem the renewal for the following quarter automatic, and the invoices as fully payable and in effect. The license and its obligations shall automatically continue from quarter to quarter during the Term of the EULA unless written notice of termination is received. In the event of early termination, Timetrics shall complete the license for the current quarter but shall terminate its use of the Timetrics Software as of the first date effective on the next quarter. No refund of License Fees shall be due to Licensee for the quarter during which cancellation occurs.

Licensee specifically understands that any termination notices received later than the thirty (30) day advance notice period, shall not be considered effective for the subsequent quarterly period, but only for the quarterly period two periods following. (E.g. Cancellation provided on May 10<sup>th</sup>, shall not be considered cancellation of the third quarter period with start date Jun 1, but shall be considered cancellation of the fourth quarter period with start date Sep 1).

**16.3 Termination by Licensee of I&C Services:** The services related to Implementation and Customization may be terminated by Licensee, by giving written notice to Timetrics not less than thirty (30) calendar days before the effective date of termination. Upon early termination of the I&C, Timetrics shall cease work on the implementation portion thirty (30) days after receiving notice and payment of I&C Fees and Expenses will be due and payable up until the date of Termination. Termination of the I&C Services shall not be deemed termination of the Software License unless Licensee provides specific notice of such, under Section 16.2 hereunder.

**16.4 Termination of Consulting Services:** Any Consulting services may be terminated by either party, by giving written notice to the other party, not less than thirty (30) calendar days before the effective date of termination. Upon termination of the consulting services, Timetrics shall cease work on the consulting services thirty (30) days after receiving notice and Licensee shall pay any outstanding consulting Fees and Expenses until the date of termination. Termination of the consulting services shall not be deemed termination of the Software License unless Licensee provides specific notice of such, under Section 16.2 hereunder.

**16.5 Other Termination Rights:** Licensee may also terminate this EULA, subject to the terms and conditions of Paragraph 13.5.(ii).

**16.6 Termination by Timetrics:** Timetrics reserves the right to immediately terminate this EULA (or may elect at its sole discretion, suspend the use of the Timetrics Property, without penalty to Timetrics) if Licensee fails to comply with any term or condition herein, or is in breach (or alleged breach) of this EULA, including without limitation any attempt to violate the ownership, confidentiality, copyright, intellectual property rights and restrictions under the EULA such as any attempt (or suspected attempt) to copy the Timetrics Property.

In addition, in accordance with Section 10.3 for Late Payments, Timetrics reserves the right, in its sole discretion to either terminate this EULA or to suspend or delay use of Timetrics Property, if payments for License Fees or I&C Fees or Expenses are past due or late, without financial penalty to Timetrics. Timetrics shall reserve the right to terminate this EULA if late payment is not cured in full within sixty (60) days, from the first date of late payment. Such termination shall not reduce or eliminate the obligation of Licensee to pay all Fees and Expenses, up to the date of termination, and for the complete quarter.

Termination (or if elected suspension) shall be immediate upon written notice to Licensee and Timetrics shall retain the option, in its sole judgment, to give Licensee the ability to cure such breach within up to thirty (30) days, depending, in Timetrics sole judgment, on the severity of the breach. No refund of License Fees shall be deemed payable for the quarter during which said termination or suspension occurs. Nothing in Section 16 shall be construed to prevent Timetrics from seeking from a court a temporary restraining order or other temporary or preliminary relief or other remedies in equity or law, as contemplated within this EULA or Contract Documents.

**16.7 Reactivation:** If either party terminates this EULA prior to the end of the Term of the EULA, or there is any other interruption to the Engagement and/or licensing of Timetrics Property, Licensee



acknowledges that Timetrics will reserve any future rights to re-activate the use of the Timetrics Property on behalf of Licensee, and Timetrics shall be able to charge a re-activation fee equal to twenty five percent (25%) of the quarterly Licensee Fees, for any interruptions, gaps in licensing, early termination or delays. Licensee may re-activate use, only upon written consent of Timetrics and subject to the continuation of the terms and conditions hereunder.

**16.8 Post Termination:** Subsequent to the expiration or termination of this EULA and/or Engagement Letter, the parties shall abide by the post termination clauses herein below and shall have no further obligations other as follows:-

- (i) Timetrics shall immediately discontinue the use of and cease to provide access to all Timetrics Software, Timetrics Recommendations, Trading Strategy and/or Timetrics Property on Licensee's behalf;
- (ii) Licensee shall pay any Early Termination Fees as specified in this EULA, or if no termination fee is specified, the pro-rated percentage of the Contract Price equivalent to the percentage of work completed through the effective date of termination;
- (iii) Licensee shall be obligated to continued to pay Timetrics for all Trading Royalties and Incentive Compensations as specified in the Contract Documents for all use and/or ongoing use of the Timetrics Property in whole or in part;
- (iv) Licensee shall be responsible for the payment to Timetrics for all Fees and Expenses incurred up to the termination date, as well as the payment of Timetrics reasonable time and expenses to bring the EULA and/or Engagement Letter to a close in a prompt and orderly manner;
- (v) Licensee shall immediately return to Timetrics, any full or partial copies of or information, related to the Timetrics Property, including any copies thereof, and shall erase or destroy all other copies or tangible embodiments of other proprietary and confidential information relating to the Timetrics Property under Licensee's possession or under its control (in written, electronic or other form);
- (vi) Licensee shall provide certification via a duly authorized officer that it has erased or destroyed all other copies or tangible embodiments of other proprietary and confidential information relating to the Timetrics;
- (vii) Timetrics will not update the Timetrics Property nor its reports, analysis, advice, recommendations or work product for any reason including but not limited to changes or modification to the market prices, new deal information, trading strategy, products, option prices, new trades, market rules, contracts or deals, market price forecasts, plant changes, any change in environmental law and regulations, or to the judicial and administrative interpretations thereof, or for subsequent events or transactions, unless Licensee separately engages Timetrics to do so in writing, (or renews the EULA or Engagement Letter at terms to be mutually agreed);
- (viii) Each party shall abide by the survival obligations as herein provided or other post-termination clauses as otherwise provided for in this EULA and other Contract Documents;
- (ix) Licensee's obligations to pay accrued charges and Fees and outstanding Taxes, if any, shall survive any termination or expiration of this EULA.

## 17. INDEPENDENT CONTRACTOR.

Timetrics its employees, Resources, subcontractors and those under its control shall perform all services and provide the license to the Timetrics Property hereunder as independent consultants, and shall not be deemed to be the employees or agents of Licensee for any purpose whatsoever. The parties will have no power, nor will either of the parties represent that it has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name.

## 18. FORCE MAJEURE

Timetrics shall not be liable for or deemed to be in default of this

EULA and/or Engagement Letter, for failure or interruption to perform or any delays or errors (including without limitation failure, delays, defects or errors to transmit information), resulting from circumstances or causes beyond its reasonable control, including, without limitation, natural disaster, floods, earthquakes, hurricanes, evacuation orders, fire or other casualty, acts of God, strikes or labor disputes, insurrection, riot, boycott, strikes, interruption of power service, interruption of communications service, electronic equipment failures, telephonic or interconnect problems, labor or civil disturbance, terrorism, war or other violence, loss or disruption of facilities, acts of any other person not under the control of Timetrics or other similar causes or any law, order or requirement of any court, governmental agency or authority, or other cause beyond the control of Timetrics (a "Force Majeure").

## 19. SURVIVAL.

All terms and conditions contained herein and the rights and obligations shall survive the expiration or termination of this EULA. Further, the obligations hereunder shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against each party, nor by the rejection of any agreement between the parties, by a trustee of a party in bankruptcy, or by either party as a debtor-in-possession or the equivalent of any of the foregoing under local law.

## 20. SUCCESSORS AND ASSIGNS.

This EULA and its terms, conditions rights and obligations will bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, legal representatives, associated and affiliated entities and their respective owners, partners, directors, officers and employees and each of their respective successors, heirs and permitted assigns.

Licensee shall not assign, transfer, sublicense or delegate this EULA, nor any of the rights or obligations under this EULA, whether in whole or in part, whether voluntary or involuntary, including without limitation under the case of a sale of stock, sale of assets or transfer of ownership, merger, consolidation, acquisition or other reorganization, to any third party, without first obtaining the prior written consent of Timetrics and any attempt to do so without first obtaining such written consent will be void and of no force and effect.

Timetrics shall be able to assign this EULA, (and/or its rights and obligations under this EULA), in whole or in part, (including without limitation, during a sale or merger with a larger consulting company), without the consent of Licensee, provided however that (i) there is no loss of functionality or interruption of software license hereunder to Licensee and; (ii) there is no change in financial terms during the Term of this EULA which Licensee has agreed hereunder. The payment obligations, and all other benefits and contractual obligations, hereunder shall continue directly to Timetrics and/or its new assumed legal entity.

## 21. SEVERABILITY.

Each term and provision of this EULA will be interpreted in such a manner as to be effective and valid under applicable law. If any term and/or provision of this shall be held to be invalid, void or unenforceable then (i) such term and/or provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such terms and/or provisions and; (ii) the remainder of the terms and provisions of this EULA shall not be affected, impaired or invalidated and each such term and provision shall remain valid, enforceable and continue in full force and effect as applicable under law. The parties agree that if any such term and/or provision is in fact held to be invalid, void or unenforceable, then that term and/or provision shall be replaced with language that (i) comes closest to honoring the intent of the parties and expressing the intention of the invalid, illegal or unenforceable term or provision; and (ii) ensures that the economic or legal substance

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of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

## 22. NO INTERFERENCE WITH PERSONNEL RELATIONS.

Timetrics may appoint in its sole discretion, and without Licensee's consent or approval, independent contractors, subcontractors, programmers, information technology personnel, software firms, analysts, third party contractors, or other resources ("Resources") to assist Timetrics in performing the services or providing the software license hereunder. Licensee understands that the Resources are the valuable business assets of Timetrics. Licensee therefore agrees that it shall neither directly contract with, recruit nor hire (nor attempt to directly contract with, recruit or hire) any Resources of Timetrics who are introduced to Licensee hereunder or have been assigned to perform the work under this EULA, for a period of two (2) years after the termination or expiration of this EULA.

## 23. ENTIRE AGREEMENT.

This EULA, together with the Engagement Letter, Terms and Conditions, Extensions Letters 1, 2 and 3 and Non-Disclosure Agreements specified in Section 1.12 hereunder including without limitation any extensions, referenced exhibits or appendices, constitute the entire agreement ("Contract Documents") between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, documents and statements, negotiations and discussions, regarding such subject matter whether oral or written, of the parties, and there are no warranties, statements, understandings or representations and/or agreements between the parties in connection with the subject matter hereof except as specifically set forth or referred to herein. This EULA is separate from and independent of all other prior agreements between the parties, and references the terms and conditions of the Merged Contract Documents as provided for herein.

In the event of a conflict between any of the terms and conditions of this EULA, and any other Contract Document, the terms and conditions of this EULA shall override and prevail and shall take precedence, unless a specific reference is made herein to a provision, term or condition of the Engagement Letter, Terms and Conditions or any other Contract Document.

## 24. GOVERNING LAW.

The validity, construction and performance of this EULA and the legal relations among the parties of this EULA shall be governed by and construed exclusively in accordance with the domestic laws of the State of New York and applicable Federal laws, (without giving effect to the conflict of law rules). This EULA will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is expressly excluded. For the purposes of all legal proceedings concerning this EULA, this EULA shall be deemed to have been performed in New York City, under New York City jurisdiction, and each party agrees and confirms that the proper law of this Agreement is, and shall be, the laws of the State of New York, USA.

## 25. CHOICE OF VENUE.

Licensee hereby agrees to attorn to and submit to the exclusive jurisdiction and venue of the State or Federal courts of New York City in the Borough of Manhattan, in the State of New York, and Licensee hereby waives any jurisdiction, venue and/or inconvenient forum objections to any state or federal court sitting in the City of New York, Borough of Manhattan, in the State of New York and Licensee agrees to submit to the jurisdiction of said courts for all purposes. The parties intend that this EULA shall be enforced to the greatest extent in time, area and degree of participation, as is permitted by law.

## 26. COPYRIGHT PROTECTIONS

Licensee acknowledges and agrees that the Timetrics Property

(including without limitation the Timetrics Software) is protected by copyright, including without limitation by United States Copyright Law, international treaty provisions and applicable laws in the country in which it is being used. Timetrics may file its copyrights at any time during, before or after the Term of this EULA at the US Copyright Office, and this does not invalidate the enforceability of the Copyright.

## 27. PATENTS/ TRADE SECRETS / PROTECTIONS

(i) **Patents:** Nothing in this EULA shall prohibit Timetrics from pursuing patents in or to its Timetrics Property. Licensee understands that Timetrics Property, may be subject to patent protection in the future and/or shall be covered under patent law under Patent Act, Title 35 U.S.C. Licensee further agrees that Timetrics may elect at its sole option to file patents on any of its Timetrics Property, including but not limited to any trade secrets, ideas, trading strategies, metrics, triggers, risk modules, techniques, reports, GUIs, designs, algorithms, strategies, approaches, processes, formulae or methodologies. The rights granted to Licensee under this EULA do not construe or imply, in any part, or in any manner any interference of joint claim in the patents (and ideas conceived hereunder by Timetrics) and all intellectual property, including without limitation, designs, algorithms, metrics, ideas, triggers, risk modules, formulae, reports, GUI's, techniques, processes, formulae, approaches and/or methodologies which are patentable are the sole ownership of Timetrics and/or its owners. Timetrics agrees that any patents, which are secured or pursued during the Term of this EULA shall not impact or increase the License Fees or commercial structure of the EULA.

(ii) **Trade Secrets:** Licensee further acknowledges and agrees that the licensed materials as defined by Timetrics Software and Timetrics Property constitute Trade Secrets ((as defined by statute at 18 U.S.C. sec. 1839(3)), intellectual property and/or copyrighted material of Timetrics and/or its suppliers, licensors or subcontractors. Timetrics Trade Secrets shall without exception, be considered Confidential and/or Proprietary Information. As such Timetrics Software and Timetrics Property are the valuable Trade Secrets, commercial property and crux of Timetrics competitive advantage. Licensee further acknowledges and agrees that the Timetrics Property is the competitive intellectual property of Timetrics and is the crux of commercial value and sale price of Timetrics business models and services

(iii) **Obligations of Protection:** Licensee hereby expressly acknowledges the sensitivity of Timetrics' Trade Secrets and/or patentable items, and that significant internal resources were invested by Timetrics to develop such ideas, and that any disclosure of the same (whether accidental or otherwise) by Licensee would cause significant business and financial harm to Timetrics.

Without limiting any provisions of the Contract Documents, Licensee will have a fiduciary and legal obligation to maintain in strictest confidence the Timetrics Property disclosed hereunder to Licensee, and to prevent such Timetrics Property (which may contain patentable and/or trade secret items) from any misappropriation, unauthorized used, unauthorized disclosure, unauthorized access, harm, theft, manipulation. Such requirements shall include (i) informing directors, officers, employees, agents, and attorneys of trade secret and/or patentable status of the information; (ii) advising directors, officers, employees, and attorneys of the strict non-disclosure restrictions, verbal or otherwise to third parties as set forth in the this EULA; (iii) only disclosing them to directors, officers, employees and attorneys on a "need-to-know" basis and to those who have signed and agreed to bound by terms and conditions herein and imposing non-disclosure restrictions on their use consistent with those herein; (iv) advising them of the consequences of misappropriation of confidential information and undertaking all other reasonable

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Initialed (Timetrics)  85



measures required to protect trade secrets and/or patents and comply with the other obligations as described herein in the EULA and/or other Contract Documents; (v) implementing security measures and other reasonable protections in its office for restricted access from third parties and to protect such trade secrets and copyrighted material from public disclosure (including without limitation restricting unauthorized third party access, promptly notifying Timetrics of any such unauthorized access so that Timetrics may seek necessary injunctive relief) and; (vi) all other obligations under this EULA and/or Contract Documents to protect Confidential Information, trade secrets and/or patentable information. The ability of Timetrics to make recommendations or references in and to its Timetrics Property including but not limited to designs, reporting, model upgrades, methodologies, trading and hedging strategies or ideas, shall not be construed as a loss or transfer of ownership of a Trade Secret.

Without limitation of any provisions in the Contract Documents, Licensee agrees not to disclose, provide, or otherwise make available such Trade Secrets, patentable materials or copyrighted material in any form to any third party without the prior written consent of Timetrics. Licensee shall be obligated to maintain such protection of Trade Secrets, copyrighted materials and/or patentable materials under the same obligation as all Confidential Information, defined therein.

Licensee further agrees to treat with utmost care, respect and confidentiality the information revealed to its directors, officers, employees and attorneys hereunder, to protect the patentable materials and/or trade secrets of Timetrics and its suppliers. The confidentiality obligations as pertains to Trade Secrets, copyrighted materials and patentable materials shall be observed also by Licensee directors, officers, employees and attorneys. In accordance with the foregoing, Licensee shall be vicariously liable for any breach by its directors, officers, employees and attorneys of Licensee as described under the provisions in the confidentiality provisions herein.

## 28. COMPLIANCE WITH LAWS.

Licensee acknowledges and agrees that it shall only use the Timetrics Property in a manner that complies with all applicable laws and rules in the jurisdictions in which Licensee uses the Timetrics Property, including but not limited to (i) all applicable regulatory, governmental and oversight regulations for Licensee's business, including but not limited to the Sarbanes Oxley Act, Dodd-Frank Act, Volcker Rule, the recording of Licensee's derivatives under applicable law, CME laws, ISO rules, CFTC, EPA, and other commodities regulators; (ii) all applicable laws, and restrictions concerning copyright and other intellectual property rights; and (iii) any other State or Federal law or rule or regulation, which are existing now, or which may come into effect in the future, collectively ("Laws").

Specifically pertaining to risk management, Licensee acknowledges and agrees that its' use and license of the Timetrics Property hereunder and any results, work product, or Licensee's final use and integration of any services or Timetrics Property hereunder and/or acceptance of Timetrics reports, advice, recommendations and other work product or deliverables resulting from this EULA will not constitute either

- (i) a basis for Licensee's assessment of internal control over financial reporting or Licensee's evaluation of disclosure controls and procedures, or its compliance with its principal officer, CFO/CEO and director certification requirements under Section 302 of the Sarbanes-Oxley Act of 2002 (the "Act") or any revisions thereof. This EULA and work product hereunder shall not be construed to support Licensee's responsibilities under Section 404 of the Act requiring each annual report filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 to contain an internal control report from management or;
- (ii) Licensee's evaluation of reporting, margin requirements, disclosure, controls and procedures, or its compliance with any



requirements whatsoever under any section of the Dodd-Frank Act, Volcker Rule, the recording of Licensee's derivatives under applicable law, or any other Laws as herein defined.

Licensee expressly agrees to take all responsibility and liability for its compliance with such Laws, and the use of services and/or license of Timetrics Property being in compliance with the foregoing Laws, and agrees to indemnify and hold Timetrics and its Indemnified Parties harmless for any failure of Licensee to comply with the foregoing.

## 29. NO OTHER TITLE

Licensee acknowledges that the license granted under this EULA hereunder does not provide Licensee with title to or ownership of the Timetrics Property (or any part thereof), or rights to use Timetrics Property (or any part thereof) after the Term of the EULA and this paragraph shall apply to and include any error corrections, enhancements, Updates, Derivative Works, or other modifications to the Timetrics Property hereunder, whether made by Licensee or by any third party or Timetrics. Licensee acknowledges that the license granted under this EULA only provides the Licensee a right of limited use or license under the terms and conditions of this EULA. Licensee shall keep its use of the Timetrics Property free and clear of all claims, liens and encumbrances

## 30. EXPORT RESTRICTIONS

Licensee acknowledges it has been advised that use of the Timetrics Property including all technical information and materials may be subject to export controls under the USA (United States of America) Export Administration Regulations. Licensee will not re-export or disclose the Timetrics Property or any related technical information or materials (including via remote access) unless Licensee has obtained authorization from Timetrics and has complied with applicable government laws, rules and regulations.

## 31. RESTRICTION ON SCOPE OF USE

The Timetrics Property shall be utilized by Licensee only in accordance with this EULA. To that end, the use and license hereunder, (and the associated scope and pricing set forth) are subject to the consideration that Licensee agrees that its' use and license of the Timetrics Property hereunder shall be solely for Licensee's sole, internal and private use for the Heating Oil Options and Customer Book, Trading Book of Licensee (as defined in the Engagement Letter) and consistent only with the limited Purpose described hereunder and that Licensee shall be an end-user of all output of the Timetrics Property. This scope does not include the license for use with any Derivative Strategies. The rights of usage granted under this EULA are strictly conditional on the restrictions set forth in Section 6 and other considerations and restrictions set forth hereunder, and otherwise such rights herein would not have been granted. THIS LICENSE DOES NOT CONVEY TO LICENSEE ANY INTEREST IN OR TO THE TIMETRICS PROPERTY, BUT ONLY A LIMITED RIGHT OF USE, REVOCABLE BY THE TERMS OF THIS EULA.

## 32. BRANDING AND PROPRIETARY NOTICES

Licensee agrees to respect and not to remove, delete, obliterate, obstruct, conceal, manipulate, modify, hide, move, alter, remove, destroy or cancel from view any (i) icon, image or text that represents the company name of Timetrics, any derivation thereof, or any icon, image, or text that is likely to be confused with the same or; (ii) any copyright, trademark, logos, confidentiality or other proprietary notice, legends or markings of Timetrics appearing on any of the reports, Timetrics Software and/or Timetrics Property, accompanying written materials and documentations, and to reproduce and include same on each copy of the above. Licensee agrees not to remove the Timetrics logos and proprietary name headings and confidentiality notice on reports (and all copies thereof, whether in whole or in part). Licensee further agrees to reproduce all such notices on copies or portions or modified versions thereof and any derivative copies of reports. All representations to the company name Timetrics must



remain as originally distributed, regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice requirement.

### 33. TRADEMARKS

Licensee acknowledges that Timetrics is the exclusive owner of all right, title and interest to Timetrics' trademarks, service marks, logos and/or trade names. Licensee shall not either during the term of this EULA or at any time thereafter challenge or cause to be challenged that validity of Timetrics' trademarks service marks and logos and/or trade names. Licensee shall not either during the Term of this EULA or at anytime thereafter file an application to register any name, mark or domain name that is confusingly similar to Timetrics' trademarks, servicemarks, logos or tradenames. Nothing in this EULA confers any right of ownership to Licensee in Timetrics trademarks, service marks or logos or trade names.

Licensee shall not, either through action or omission, adversely affect Timetrics intellectual property rights and use of trademarks in Timetrics Property. Trademarks shall be used in accordance with trademark practice, including identification of trademark owner's names. Trademarks shall be used to identify any and all Timetrics Property. The foregoing uses are the only permitted uses of Timetrics trademarks, service marks, logos and tradenames. Any use that is not identified hereunder is strictly prohibited. Notwithstanding any rights granted above, Timetrics reserves the right to restrict Licensee's use of Timetrics' trademarks, servicemarks and/or tradenames except as expressly permitted in writing by Timetrics.

Licensee acknowledges and agrees that Timetrics' trademarks, service marks, logos and trade names are of great value to Timetrics and that the authorized and approved uses set forth above are integral to compliance with this EULA. Licensee further understands that any unauthorized or unapproved use of those marks and name, and any other breach of this paragraph with respect to trademarks, would irreparably injure Timetrics and entitle Timetrics to immediate injunctive relief in addition to any other remedies available in equity or under the law.

### 34. MARKETING

Timetrics will be able to include Licensee as a client, along with a brief description of the services, and objectives rendered in the course of this EULA and the name of Licensee as an end user of Timetrics Software, on its marketing literature, website and general case and client studies marketing information. Timetrics shall also be able to use issue the logo and name of Licensee on its marketing literature, website and client lists along with, in the same manner and font sizing as those of its other clients and disclose such information to third parties. Without breach of confidential information provided, and/or disclosing the details, pricing and terms of this EULA, Timetrics shall be able to issue a press-release describing its successful use of the Timetrics Software with Licensee, the wording of which shall be subject to mutual approval, which shall not be unreasonably withheld.

### 35. AUDIT AND COMPLIANCE.

35.1. In consideration of the access and license of Timetrics Property hereunder, Licensee agrees that Timetrics may audit Licensee's use of the services or Timetrics Property for compliance with the terms of this EULA at any time, upon reasonable notice, and no more frequently than once per Calendar Year and in accordance with the terms in Section 36 of the Terms and Conditions. In the event that such audit reveals any use of the Timetrics Property by Licensee other than in full compliance with the terms of this EULA and/or other Contract Documents (including without limitation Licensee's attempt to copy the software), Licensee shall reimburse Timetrics for all expenses and Losses related to such audit, including but not limited to reimbursement of its time spent for professional services at its current hourly billable rates, all out-of-pocket expenses, License Fees and reasonable

legal fees. The foregoing shall apply to any time spent in audit or enforcement of its rights, in addition to any other damages Timetrics may incur as a result of any such non-compliance. The foregoing shall be without limitation to Timetrics remedies, damages and rights available in equity and in law, including without limitation, an accounting of all profits unjustly received, and any injunctive relief, and to all damages available to it in equity and law for Licensee's non-compliance with the provisions in this EULA and/or other Contract Documents.

35.2 Operator additionally agrees that if Operator is no longer an employee with Licensee, and seeks employment at another entity or continues as a sole practitioner or otherwise, the Operator warrants and agrees (i) to provide a voluntary disclosure document in any future employment contract, which will specify that Operator has signed a EULA with Timetrics, which includes provisions of non-disclosure and restrictions of use, and that Operator certifies and warrants that it will not use Timetrics Property at its new place of employment; (ii) to abide by all terms, conditions and restriction in this EULA in perpetuity including without limitation the condition that it will not use of Timetrics Property for any personal use or at any company of future employment and; (iii) without limitation to any other provisions in this EULA, in the event of a breach of this EULA, that Operator will be bound by and abide by Section 7.7 and Section 7.8 of this EULA protecting Timetrics interests herein.

Operator understands that in the event of any breach under Paragraph 35.2 above, Operator shall be liable to Timetrics for all profits unjustly received by Operator and any beneficiaries, all Timetrics Losses, as well as all other recovery, damages and remedies available to Timetrics in equity and in law.

In the event this EULA is extended to the Launch Term and Operator has utilized Timetrics Property for more than six (6) months, in addition to Paragraph 35.2, Operator shall cooperate with Timetrics in any enforcement of this contract and shall provide Timetrics with the name and address of the single next company of employment after any termination of employment with Licensee. For clarification, the foregoing shall apply to only one company and the first company at which Operator gains employment after Licensee.

### 36. INSURANCE

If Licensee requires in writing any insurance to be purchased by Timetrics to provide this EULA or any other services or goods, these premiums will be charged as out-of-pocket expenses incurred by Timetrics to be reimbursed by Licensee. Licensee specifically acknowledges and agrees that this EULA and the pricing considered hereunder does not provide for or include any endorsement of coverage to Licensee under any insurance policy of Timetrics whatsoever, including without limitation, errors and omissions insurance. Licensee hereby waives any rights to file any claims on Timetrics insurance.

### 37. CONSEQUENTIAL OR RECOVERABLE DAMAGES

It is specifically agreed and acknowledged that if the Licensee breaches this EULA and/or Engagement Letter, Licensee shall indemnify Timetrics for its involvement associated with remedying, enforcing and prosecuting such breach and reimburse Timetrics for its Losses, including without limitation professional service hours at standard billing rates for professional time and expenses spent on the foregoing, SaaS License Fees, reasonable legal fees. The foregoing shall include without limitation any time spent in audit as well as back-testing or any other legal process or enforcement of its rights. Without limitation of the foregoing, Timetrics shall also be entitled to all damages available to it in equity and law for Licensee's non-compliance with the provisions in this EULA and/or Engagement Letter. This paragraph shall be in addition to any recovery or damages available to Timetrics under equity and law, including an accounting of unjust enrichment received by Licensee.

**38. NO WAIVER OR AMENDMENT**

The terms of this EULA and/or Contract Documents and any extensions thereto shall not be amended or changed by the terms of any purchase order or acknowledgment even though Timetrics may have accepted or signed such documents. No amendment or modification of this EULA and/or any Contract Documents will be effective or binding upon the parties unless it is in writing and is signed by both Timetrics and Licensee.

The waiver, amendment or modification of any term or provision of this EULA (or any right, power or remedy thereunder) shall not be effective unless made in writing and signed by the party against whom enforcement of such waiver, amendment or modification is sought. All waivers must be in writing and signed by the party waiving its rights. Failure of either party at any time to enforce its rights or require performance in any one term or provision of the EULA shall (i) not constitute a waiver of such term or provision thereof; and (ii) in no manner affect such party's right at a later time to enforce the same or any other term of this EULA; and (iii) not constitute a waiver of the party's rights in any other part or provision of the EULA.

No failure or delay or omission by either party in exercising any right, power occurring upon any non-compliance or default by the other party, with respect to any of the terms or provisions of this EULA (or any rights hereunder), will impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other will not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. No waiver by any party of its rights against the other for a particular default shall be deemed to be a waiver of rights with regard to any other default by the other.

**39. NOTICES**

All notices required under this EULA and/or Engagement Letter shall be in writing and signed, and shall be deemed to be given when received either (i) by electronic email with response confirmation of receipt of the electronic email to be manually acknowledged from the other party (and in the absence of such response of emailed confirmation will be required to be sent as notice under Section 39.(ii) or Section 39.(iii) hereunder); or (ii) upon personal delivery; or (iii) if mailed it shall be by courier with signature required, and shall be deemed to be delivered as of the date indicated on the receipt document with signature provided by the courier if so delivered, and shall be sent to the address as provided below in the EULA. Such notices shall be addressed to the parties who are signatory to this EULA.

**NOTICE IF TO LICENSEE:**

Northland Energy Trading, LLC  
500 N. Commercial Street, Suite 302A,  
Manchester, NH, 03101  
Attention: Mr. Rich Larkin  
Phone: 800-709-2949  
Facsimile:  
Email: [rich@hedgesolutions.com](mailto:rich@hedgesolutions.com)

**NOTICE IF TO TIMETRICS:**

Timetrics  
154 Reade Street, 2<sup>nd</sup> Floor  
New York, NY 10013  
Attention: Samantha Siva Kumaran  
Phone: (212) 431-5098  
Facsimile: (209) 755-5834  
Email: [samantha@timetricsrisk.com](mailto:samantha@timetricsrisk.com)

**40. LATE SIGNATURE**

The start date of the EULA shall be effective as of November 1<sup>st</sup> 2012, ("Effective Date") and applied retroactively to the first date Parties commenced providing the license(s) granted and services contemplated under this EULA, which shall be deemed November

1<sup>st</sup> 2012, All conditions herein shall be deemed to be in full force and effect from this date of November 1<sup>st</sup>, 2012. Any Fees and Expenses incurred retroactively shall be paid in full upon the date of executing the EULA.

[SIGNATURE PAGES FOLLOW]

Initialed (Licensee)  Initialed (Timetrics) 



Timetrics End User License Agreement  
Confidential and Trade Secret



EULA – Feb 28<sup>th</sup> 2013  
Northland Energy Trading - Go-Live

Signed and Agreed:

Northland Energy Trading

By Richard M Larkin  
(signature)

Name Richard M Larkin  
(print)

Title: Manager - Member

Phone: 603-644-3343

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: 3-7-2013

Mailing Address (The Authority)

Attention: Mr. Rich Larkin

CEO

Northland Energy Trading, LLC

500 N. Commercial Street, Suite 302A,  
Manchester, NH, 03101

Signed and Agreed:

The A Star Group, Inc. d/b/a Timetrics

By S. Kumaran  
(signature)

Name Samantha S. Kumaran  
(print)

Title CEO - Owner

Phone: 212-431-5098

Email: samantha@timetricsrisk.com

Fax: 209-755 5834

Date: 3/7/2013

Mailing Address (Timetrics)

Attn: Samantha S. Kumaran

CEO

The A Star Group, Inc d/b/a Timetrics

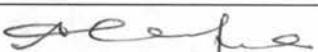
154 Reade Street 2<sup>nd</sup> Floor  
New York, NY. 10013

**APPENDICES****Appendices A, B and D**

\*\* to be provided upon execution of the mutual option to execute the Implementation Term and Launch Term.

**Appendix C****Operators of Licensee**

Operators under Section 1.2 of this EULA will be listed in the following table. By their signatures hereunder, the Operators agree to be bound by the terms and conditions of this EULA.

<b>TABLE OF OPERATORS OF LICENSEE UNDER LICENSE TYPE B OR LICENSE TYPE C</b>	
Name:	Aviral Chopra
Title / Position in Company:	Senior Trader
Email:	aviral@hedgesolution.com
Signature:	
Date:	March 7, 13
SSN#:	[REDACTED]
Address:	1 Blaeberry Way #313 Nanuet, NY, 03101